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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 PEOPLE OF THE STATE OF CALIFORNIA,

13 Case No. SA068002

14 Plaintiff,

15 v.

16 MICHAEL THOMAS GARGIULO,

17 Defendant.

18 **PEOPLE'S MOTION PURSUANT TO  
19 EVIDENCE CODE § 1101(b) TO  
ADMIT EVIDENCE OF THE  
"UNCHARGED" 1993 TRICIA  
PACACCIO MURDER TO PROVE  
DEFENDANT GARGIULO'S  
IDENTITY AND INTENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

20 *Evidence Code § 1101(b)*

21 TO THE HONORABLE SAM OHTA, SUPERIOR COURT JUDGE, AND TO  
22 DEFENDANT MICHAEL GARGIULO, *IN PRO PER*:

23 THE PEOPLE OF THE STATE OF CALIFORNIA move to admit evidence of  
24 the "uncharged"<sup>1</sup> 1993 Tricia Pacaccio murder (hereafter "the Pacaccio murder")

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27 <sup>1</sup> Defendant Gargiulo has been indicted in Chicago for the Pacaccio murder and he will be extradited to  
28 Illinois to stand trial there when these proceedings in Los Angeles are completed. However, for the  
purpose of *Evidence Code* section 1101(b) analysis in California, the Pacaccio murder is considered  
"uncharged."

pursuant to Evidence Code section 1101(b) for two purposes. First, to prove defendant Gargiulo's identity as the perpetrator in all of the attacks because each of the attacks bears the same "signature." Second, to prove defendant Gargiulo's intent, specifically that each attack was willful, deliberate, and premeditated, based on the rationale set forth by the California Supreme Court in *People v. Rogers* (2013) 57 Cal. 4th 296, which is directly on point and dispositive of this issue.

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## FACTUAL AND PROCEDURAL SUMMARY

Defendant Michael Gargiulo (hereafter “Gargiulo”) is charged with two counts of murder with special circumstances, one count of attempted murder, three counts of burglary, and one count of attempted escape. He was arrested and charged in Los Angeles in 2008 and the prosecution is seeking the death penalty. It is also alleged pursuant to Evidence Code section 1101(b) that Gargiulo murdered a young woman, Tricia Pacaccio, under eerily similar circumstances in Chicago in 1993. Court appointed attorneys Charles Lindner and Dale Rubin represented Gargiulo through the preliminary hearing but Gargiulo now represents himself. He remains incarcerated in the Los Angeles County Jail.

Based on all of the facts and circumstances of the attacks on the four victims, the prosecution alleges that Gargiulo is a serial, psychosexual, thrill-killer who engages in the systematic slaughter of beautiful women because he takes sexual pleasure from manipulating, stabbing, and killing his victims. His *modus operandi* is to first identify a "target," acquaint himself with that victim while injecting himself into her life, and then to watch, stalk, and "hunt" down the victim relentlessly as part of his "foreplay." He

1 eventually manipulates the circumstances to provide himself with the perfect opportunity  
2 to kill in blitz-type knife attacks and escape detection, all for his psychosexual  
3 gratification.

4 The factual summaries of the charged and uncharged crimes alleged in this case  
5 are as follows:

6 **A. The Pacaccio Murder**



22 In the early morning hours of August 14, 1993, Tricia Pacaccio was stabbed to  
23 death on the stoop of her family's home in Glenview, Illinois, just outside Chicago. Ms.  
24 Pacaccio was eighteen years old, petite, attractive, outgoing, and popular among her  
25 classmates. She had spent the evening with a group of friends, celebrating their high  
26 school graduation and saying goodbye before heading off to different colleges. Ms.  
27 Pacaccio was bound for Purdue University in Indiana, where she had earned an  
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1 engineering scholarship.

2 Ms. Pacaccio gave several friends a ride home that night. She dropped off her last  
3 passenger at around 1:00 AM, and then drove the few minutes to her suburban house.  
4 There were other family cars parked in the side driveway that night, forcing Tricia to park  
5 in the front driveway. After parking, she walked with keys in hand to the side door of the  
6 house, which was routinely used by family members as the point of entry and exit. The  
7 family never used the front door of the home and strangers would be unaware of this  
8 practice. Tragically, Ms. Pacaccio never made it inside. Instead, her father discovered  
9 her body on the doorstep the next morning.

10 The attack on Ms. Pacaccio was notable for the extreme violence of her attacker.  
11 Ms. Pacaccio was stabbed numerous times, mostly in her upper left torso, and suffered a  
12 spiral fracture to her left arm. Investigators surmised that her attacker surprised Ms.  
13 Pacaccio from behind, controlling her by twisting her left arm up and behind her back  
14 with his right hand, and then stabbing her in the upper left torso region using a knife held  
15 in his left hand.

16 The attack occurred at the side of the home, which is located along a cul-de-sac.  
17 There was a home immediately adjacent to the Pacaccio home and several directly across  
18 the street. The neighbors and guests at those homes were in a position to hear and/or see  
19 something that night had they been looking across at the Pacaccio home. There was a  
20 picture window in the Pacaccio home overlooking the stoop where, if a family member  
21 were sitting inside when Ms. Pacaccio approached the door, he or she would have seen  
22 the attack. Neighbors living across the street from the Pacaccio home on the main  
23 thoroughfare were hosting a party that lasted into the early-morning hours on August  
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1 14<sup>th</sup>. Some of the partygoers would have been leaving the party and walking to their cars  
2 at about the same time Ms. Pacaccio came home. These people could have observed the  
3 offender walking around, or seen Ms. Pacaccio parking her car and walking to the side of  
4 her house. The cars parked in the Pacaccio's side driveway would have alerted anyone  
5 that the home was most likely occupied. Someone more familiar with the Pacaccio  
6 family and the family's cars would have known specifically who was inside the home  
7 that morning. A stranger would not have known specifically who was inside the home,  
8 the occupants' routines or schedules, and what, if any, threat the people inside might  
9 pose.

10  
11 If Ms. Pacaccio had seen someone standing near the side door, whom she did not  
12 recognize, it is unlikely she would have continued toward that door. Therefore, it is most  
13 likely she either did not see anyone there or, if she saw someone, this person was familiar  
14 to her and she did not consider him to be a threat. The attack on Ms. Pacaccio was a  
15 blitz-ambush style attack, which most likely immediately overpowered her. Ms. Pacaccio  
16 was stabbed multiple times. There was no evidence of sexual assault or an attempted  
17 sexual assault; anally, vaginally, or orally.

18  
19 The attack on Ms. Pacaccio shares many key characteristics with the attacks on  
20 Ms. Ashley Ellerin, Mrs. Maria Bruno, and Ms. Michelle Murphy. The victim was  
21 attacked under a cover of darkness, at the victim's home, with a knife. The victim was a  
22 petite, attractive, and outgoing young woman. Gargiulo lived within short walking  
23 distance of the victim's home. He was a peripheral figure in the victim's life, watching  
24 her from the margins. Gargiulo was friends with the victim's younger brother, Doug  
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1 Pacaccio, and Gargiulo would see her from time to time when visiting the Pacaccio  
2 family home.

3 The attack on Ms. Pacaccio is also similar to the later attacks on Mrs. Bruno and  
4 Ms. Murphy in one other critical respect that would not be discovered until 2003. In all  
5 three attacks, Gargiulo left his DNA at the crime scenes. Gargiulo's DNA was  
6 discovered on Ms. Pacaccio's fingernails, on a surgical booty with Ms. Bruno's blood on  
7 it located immediately outside of her apartment door, and was mixed with Ms. Murphy's  
8 blood on her bedspread and in a trail of blood leaving her residence.

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10 Gargiulo later discussed the Pacaccio murder with a friend and told him that he  
11 was wanted for a "body" in Chicago and that he had "stabbed up the girl." He discussed  
12 the murder with another friend and told him that he "buried the bitch" and "left the bitch  
13 on the step for dead."

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15 In the meantime, Gargiulo moved from Chicago to the Los Angeles area and took  
16 up residence within a short walking distance from his second victim, Ashley Ellerin.

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2     B. The Ashley Ellerin Murder



17     Twenty-two year old Ashley Ellerin was brutally stabbed to death inside her  
18     apartment on February 21, 2001 (Counts 5 and 6). Until her murder, Ms. Ellerin led a  
19     glamorous life. As a beautiful fashion student, she socialized with a young "Hollywood"  
20     crowd, used drugs recreationally, and was dating Ashton Kutcher, a well-known actor.  
21     Gargiulo lived within walking distance of her single-family home in Hollywood,  
22     California.

24     The house is located in a densely populated area close to a major thoroughfare of  
25     shops, restaurants, and businesses. In the immediate area around the Ellerin home, there  
26     are numerous apartment buildings and single-family homes located very close to one  
27     another. Because of the height of some of the apartment buildings, it is possible to look

1 down at Ellerin's home from upper level apartments, as well as from the roofs of  
2 buildings in the area. The road alongside the back of the Ellerin residence was a dead  
3 end road. Her house was also adjacent to a public dog park where, at that time, the public  
4 could walk their pets 24 hours a day, seven days a week.

5       The lovely and social Ms. Ellerin attracted Gargiulo's attention, and during the  
6 months leading up to her murder, he injected himself into Ms. Ellerin's life. Gargiulo  
7 would appear at Ms. Ellerin's apartment, unannounced and uninvited. Witnesses saw  
8 Gargiulo staring into Ms. Ellerin's apartment at odd hours, surveilling her home.  
9 Gargiulo's actions were so disturbing that Ms. Ellerin's previous roommate, Justin  
10 Peterson, concluded that Gargiulo was a "stalker."

11       On one occasion, Gargiulo appeared at the home unannounced, looking for Ms.  
12 Ellerin. Mr. Peterson answered the door and let Gargiulo know that she was not home.  
13 During the ensuing conversation, Gargiulo told Mr. Peterson "the FBI is after me for a  
14 murder they say I committed in Chicago." Gargiulo then showed Mr. Peterson a knife he  
15 had concealed in a sheath on his ankle.

16       Gargiulo believed he had a "special relationship" with Ms. Ellerin, but while Ms.  
17 Ellerin was flirtatious and had relationships with other men, she did not pay particular  
18 attention to Gargiulo. On the night of her murder, Ms. Ellerin's landlord visited her  
19 apartment and the two shared an intimate encounter. After the landlord left at  
20 approximately 8:15 PM, Ms. Ellerin took a shower and prepared to go out on a date.  
21 Gargiulo then entered Ms. Ellerin's home and stabbed her viciously over 47 times. He  
22 slashed Ms. Ellerin's throat so violently during the attack that Gargiulo nearly  
23 decapitated her.

1 Ms. Ellerin was murdered between 8:15 PM and 9:00 PM on February 21, 2001.  
2 At that time in the evening, there would have been residents, visitors, and service people  
3 moving throughout the neighborhood who could have seen or heard something if they  
4 were in the right locations. At the time of Ms. Ellerin's murder, there were bars on most  
5 of the windows of her home, but they did not obstruct an outside view. In front and along  
6 the sides of Ms. Ellerin's home were bushes, trees, and other foliage that provided the  
7 home with some privacy. The foliage on the sides and back of the house was denser than  
8 the front. The front of Ms. Ellerin's home had windows that looked out on a parking area  
9 where she and her roommate parked their cars. These windows were not covered with  
10 blinds or curtains and someone walking by would have been able to see inside. The dog  
11 park located across from Ms. Ellerin's home was slightly elevated and someone standing  
12 in the park at the time of her murder could have seen inside the home and those coming  
13 and going from the home. Ms. Ellerin's car on the night of the murder was parked in  
14 front and the lights were on inside the home.  
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16 Ms. Ellerin's roommate at the time had gone out that evening and later returned  
17 and attempted to enter the home. However, the door was locked and she did not have her  
18 keys, so she left. She returned the following day and found Ms. Ellerin's body.  
19

20 There were no signs of forced entry or forced exit inside or outside the Ellerin  
21 home. The doors and windows were secured. According to people who knew her, Ms.  
22 Ellerin locked her doors when she was home alone. There were no signs of a struggle at  
23 the front door or anywhere else in the home. The attack and murder scene are limited to  
24 the area in the house where Ms. Ellerin's body was found. Her injury pattern indicates  
25 the offender gained immediate control of her and never lost control. Therefore, it is less  
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1 likely that this offender knocked on Ms. Ellerin's front door, was allowed inside, and  
2 sometime later initiated the attack. It is more likely he entered Ms. Ellerin's home  
3 without her knowledge using a key he somehow obtained or by manipulating one of the  
4 locks on the door, then used his blitz-ambush style of attack to subdue Ms. Ellerin before  
5 she realized what was happening.

6  
7 After she was murdered, her body was left displayed in a provocative, grotesque  
8 and demeaning pose that was sexual in nature. There was no sign of sexual assault or  
9 attempted sexual assault; anally, vaginally, or orally. A very unique characteristic of the  
10 Ellerin murder, as well as with the murder of Mrs. Bruno, Ms. Pacaccio, and the  
11 attempted murder of Michelle Murphy, is that there was no evidence of sexual assault on  
12 any of the victims or any motive for the murder other than the perpetrator's thrill of  
13 mutilating beautiful women. The lack of motive, other than thrill-killing, is a very  
14 distinguishing and unique feature of all of these attacks.

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16 The Los Angeles Police Department ("LAPD") is in charge of the Ellerin  
17 investigation. While that case was under investigation, the Defendant moved from the  
18 Hollywood area to the El Monte area of Los Angeles County.

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### C. The Maria Bruno Murder



Thirty-two year old Maria Bruno lived in a ground floor, one-bedroom apartment, in a two-story complex located in El Monte, California. Mrs. Bruno moved into her apartment approximately one week before her murder, having separated from her husband. Access into the complex from the street was restricted and required a special access card to gain entry. However, once inside, there were no restrictions preventing access to the common areas of the complex and movement by both tenants and visitors was unfettered. Non-residents would not be familiar with the complex or its residents and their schedules.

1           Mrs. Bruno had not yet established a regular routine, and she came and left her  
2 apartment at different times of both the day and night. Several days prior to her murder  
3 three different men visited her apartment after 11:30 PM. Another male friend spent the  
4 night with Mrs. Bruno the day before she was murdered.

5           On the evening before the murder, Mrs. Bruno and her husband, Irving, had been  
6 out drinking. Irving drove Mrs. Bruno back to her apartment in the early morning of  
7 December 1, 2005. He spent approximately 30 to 45 minutes with her at the apartment  
8 while they engaged in sexual relations in both her bathroom and bedroom. Mr. Bruno  
9 left his wife's apartment at approximately 2:30 AM. When he left, his wife was nude,  
10 covered up, and asleep in her bed.

12           Sometime after 2:30 AM, the offender removed Mrs. Bruno's kitchen window  
13 screen and entered her apartment. The screen was found later that morning in the grassy  
14 area between the front of Mrs. Bruno's apartment and the apartment adjacent to hers.  
15 Mrs. Bruno was attacked and murdered in her bed (Counts 3 and 4). There were no signs  
16 of a struggle inside her apartment. She was stabbed multiple times and the offender  
17 engaged in post-mortem mutilation of her breasts. Mrs. Bruno's body was also uniquely  
18 posed in a provocative, grotesque, and demeaning display that was sexual in nature.  
19 There were no signs of sexual assault or an attempted sexual assault; vaginally, anally, or  
20 orally.

22           Like the attacks on Ms. Ellerin, Ms. Pacaccio, and Ms. Murphy, the attack on  
23 Mrs. Bruno was especially violent. Gargiulo quite literally butchered her body – stabbing  
24 her multiple times, slitting her throat, slicing off her breasts, and staging her for family  
25 members and police investigators to find.

1       When Mrs. Bruno was murdered, residents were home inside their own  
2       apartments. Mrs. Bruno's neighbors could see who was moving around the common  
3       areas and who was coming and going even though there were some trees, bushes, and  
4       other foliage planted throughout the complex. Mrs. Bruno's apartment was not obscured  
5       by foliage.

6       Gargiulo's attack on Mrs. Bruno mirrored his attack on the other victims. Again,  
7       Gargiulo lived near the victim, this time in the very same apartment complex and within  
8       eye and earshot of Mrs. Bruno's apartment. His attention would have been drawn to the  
9       victim – a petite, attractive, outgoing, young woman. He again attempted to inject  
10      himself into the victim's life. The victim, like the others, was flirtatious and had  
11      relationships with other men, but did not pay particular attention to Gargiulo. Gargiulo  
12      surveilled the victim at her home; in fact, witnesses saw a person matching his  
13      description staring at the victim's apartment in the days leading up to her murder,  
14      watching her as she moved around inside. A few days before Mrs. Bruno's murder, a  
15      man matching Gargiulo's description trailed Mrs. Bruno into her apartment uninvited.  
16      Realizing an intruder had followed her into her apartment, Mrs. Bruno turned and ordered  
17      him to leave.

18      While the Bruno murder was under investigation, Gargiulo moved, this time to  
19      the Santa Monica area of Los Angeles County.

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#### D. The Michelle Murphy Attempted Murder



Twenty-seven year old Michelle Murphy, Gargiulo's fourth victim, was viciously attacked as she slept in her Santa Monica apartment on April 29, 2008 (Counts 1 and 2). She shared her two-bedroom apartment with a female roommate who was on vacation at the time of the attack. Ms. Murphy was alone in her apartment that evening. Her apartment was located on the second floor of a large apartment complex; flanked closely by apartment buildings on either side and separated by narrow sidewalks, used by residents and guests throughout the day and night. Behind Ms. Murphy's apartment was an alley the size of a single lane road, which could be accessed at either end. Residents, visitors, and the general public used this alley throughout the day and night. There was a

1 carport directly underneath Ms. Murphy's apartment and adjacent to the alley. Ms.  
2 Murphy's vehicle was parked in its designated parking space on the evening of the attack.

3 In the late evening/early morning hours of her attack, Ms. Murphy took a shower  
4 and then watched television from her couch in front of a large window. Before going to  
5 bed she cracked the large front window to allow airflow throughout the apartment. She  
6 locked her front door and went to sleep.  
7

8 Gargiulo scaled up the side of Ms. Murphy's building in order to reach the large  
9 front window she left cracked. The window is approximately ten feet above the concrete  
10 sidewalk below and is also within very close proximity of the front porch of an adjacent  
11 apartment facing that window. Gargiulo then cut the screen on the window and entered  
12 Ms. Murphy's apartment. It took time to access Ms. Murphy's apartment and at any  
13 point could have been visible to people walking below, people using the alley, or to  
14 residents looking out of their windows from adjacent apartments.  
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16 Gargiulo's attack on Ms. Murphy was repetitive of his attacks on Ms. Ellerin,  
17 Mrs. Bruno, and Ms. Pacaccio. Gargiulo lived near the victim, this time in the apartment  
18 directly across a shared alley, where he was able to see into Ms. Murphy's apartment.  
19 His attention was also drawn to the victim as a petite, attractive, outgoing, young  
20 woman — earlier in the evening on the day of the attack, Ms. Murphy had been jump-  
21 roping in the alley her apartment shared with Gargiulo's apartment, wearing a tight-  
22 fitting spandex exercise outfit. He injected himself into the victim's life — in the months  
23 leading up to the attack, Gargiulo would greet Ms. Murphy outside her apartment, even  
24 though they did not know one another. Again, the victim did not pay particular attention  
25 to Gargiulo, but was flirtatious and in a relationship with her new boyfriend. In the  
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1 weeks before the attack, Ms. Murphy's new boyfriend frequently visited her apartment.  
2 Gargiulo attacked the victim inside her own home, in her bed, under the cover of  
3 darkness, with a knife. Ms. Murphy fought with Gargiulo, who was stabbing her  
4 viciously all over her arms and chest. He did not sexually assault her or attempt to  
5 sexually assault her; anally, vaginally, or orally.  
6

7 The only difference from the attacks on Ms. Ellerin, Mrs. Bruno, and Ms.  
8 Pacaccio, is that Ms. Murphy was fortunate enough to fight off Gargiulo. Ms. Murphy  
9 was able to kick Gargiulo during his blitz-ambush style attack, causing him to cut his  
10 own wrist with the knife, in turn causing him to flee. In doing so, Gargiulo left his blood  
11 inside the apartment on Ms. Murphy's bedspread, and in the alley separating Ms.  
12 Murphy's home and Gargiulo's home. **Again, Gargiulo left his DNA at the crime**  
13 **scene.** When investigators asked Ms. Murphy about any strange men in her area, she  
14 mentioned Gargiulo. The DNA from the crime scene was loaded into the Combined  
15 DNA Index System (CODIS), and a match came back to Gargiulo. Investigators  
16 eventually obtained a sample of Gargiulo's DNA and matched it to the DNA he had left  
17 behind in Ms. Murphy's apartment. Gargiulo was then arrested and charged accordingly.  
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20 **II.**

21 **EVIDENCE CODE SECTION 1101(B)**

22 **A. General Law**

23 Evidence Code section 1101(b) allows for the admission of uncharged acts and  
24 crimes to prove *some fact* such as motive, opportunity, intent, preparation, common plan  
25 or scheme, knowledge, identity, or absence of mistake or accident. Generally, the  
26 prosecution may not use a defendant's prior criminal act as evidence of a disposition to  
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1 commit a charged criminal act. Evidence Code section 1101(a). However, Evidence  
2 Code section 1101(b) provides an important exception:

3 Nothing in this section prohibits the admission of evidence that a person  
4 committed a crime, civil wrong, or other act when relevant to prove some fact  
5 (such as motive, opportunity, intent, preparation, plan, knowledge, identity, [or]  
6 absence of mistake or accident...) other than his or her disposition to commit such  
an act.

7 Thus, prior bad acts or uncharged crimes of a defendant may be admissible when  
8 offered to prove a fact other than his mere disposition to commit the act. *See People v.*  
9 *Ewoldt* (1994) 7 Cal. 4th 380.

10 Evidence of uncharged crimes is admissible for three primary—although far from  
11 exclusive — purposes: to prove intent, common plan or scheme, and identity. Regardless  
12 of the purpose, such evidence is admissible “only if the charged and uncharged crimes  
13 are sufficiently similar to support a rational inference of identity, common design or plan,  
14 or intent.” *People v. Kipp* (1998) 18 Cal. 4th 349, 369; *see also Ewoldt*, 7 Cal. 4th 402.

15

16 **B. The Procedure**

17 Courts usually analyze the admissibility of uncharged acts evidence in a three-  
18 step process, as set forth in *Ewoldt*, the seminal case for 1101(b) analysis upon which all  
19 subsequent cases have been built.

20

21 First, there must be a genuinely contested issue. Note, however, that in a criminal  
22 case, a plea of “not guilty” places in issue every element of the offense. *See People v.*  
23 *Williams* (1988) 44 Cal. 3d 883, 908.

24

25 Second, the uncharged crime or act must be similar enough to the charged crime  
26 or act to support the non-propensity inference the evidence is admitted to prove. The  
27 degree of similarity required depends on the purpose for which the evidence will be  
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1 introduced. For example, for the purpose of proving intent, the least degree of similarity  
2 is required between the uncharged and charged offenses. Whereas for the purpose of  
3 proving a common plan or scheme, a greater degree of similarity is required. *Ewoldt*,  
4 *supra*, 7 Cal. 4th at 402. Moreover, for the purpose of proving identity, the greatest  
5 degree of similarity is required between prior, uncharged misconduct and the charged  
6 offense. The uncharged misconduct and the charged offense must share common  
7 features that are sufficiently distinctive so as to support the inference that the same person  
8 committed both acts. The pattern and characteristics of the crimes must be so unusual  
9 and distinctive so as to be a type of "signature."

10  
11 Third, if the first two requirements are satisfied, the court should consider whether  
12 the uncharged acts should be excluded under Evidence Code section 352. *See Ewoldt*, 7  
13 Cal. 4th 380, 404, 426; *People v. Balcom*, (1994) 7 Cal. 4th 414, 422.

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15 III.

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17 THE SIMILARITIES

18 The Pacaccio murder is *eerily similar* to the knife attacks on Ashley Ellerin,  
19 Maria Bruno, and Michelle Murphy. The combination of facts and circumstances of each  
20 knife attack are highly unique and establish a signature that points to a single perpetrator  
21 – defendant Michael Gargiulo. The points of similarity are as follows:<sup>2</sup>

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23 1. GARGIULO KNEW EACH VICTIM

24 Gargiulo is the common thread between the victims who otherwise did not know  
25 each other and had no connection whatsoever with one another. Gargiulo was a

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28 <sup>2</sup> These points of similarity are summarized from the expert witness analysis performed in this case by  
retired FBI special agent Mary Ellen O'Toole. Her report, dated June 14, 2014, is attached as Exhibit A.

1 childhood friend of Tricia Pacaccio's brother, had injected himself into Ashley Ellerin's  
2 life and stalked her, and was acquainted with Maria Bruno and Michelle Murphy.

3 **2. GARGIULO LIVED WITHIN STEPS OF EACH VICTIM**

4 Gargiulo lived within steps of all four victims, as indicated on the aerial  
5 photographs below:



1

3. **THE VICTIMS WERE SIMILAR**



8 All of the victims were unmarried or single women with similar physical  
9 appearances and personalities, and were also sexually active. The victims ranged from  
10 18 to 32 years of age and were similar in stature – petite, each under 5'4", and weighing  
11 less than 130 pounds. Each of the victims was also described by people who knew them  
12 as physically attractive and outgoing.

14

4. **ALL OF THE VICTIMS WERE “LOW RISK”**

15 The four victims shared a very low risk level for being targeted for violence  
16 because of where they lived, their lifestyles, and where they were attacked.<sup>3</sup> The victims  
17 were all gainfully employed or going to school, resided in stable homes in areas with low  
18 instances of violent crime, and were not involved in any criminal activity or other high  
19 risk behaviors that would expose them to a high risk of harm.

21

5. **SPECIFICALLY TARGETED VICTIMS**

23 Each of these crimes demonstrates a sophisticated level of planning and  
24 preparation, and was executed with uncanny timing, indicating that the victims were  
25 specifically targeted by the offender, as opposed to being victims of opportunity.<sup>4</sup> Here,

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<sup>3</sup> Exhibit A, pg. 8

<sup>4</sup> Exhibit A, pgs. 9.

1 the offender specifically went to the victims' homes or the area immediately outside the  
2 home to murder them. In order to carry out these high risk attacks and slip away without  
3 detection, planning, preparation, and targeting these victims were required.

4 **6. EACH VICTIM WAS STALKED AND SURVEILLED**

5 Residential neighborhoods are comprised of potential witnesses and heroes who  
6 can intervene with this type of behavior. Therefore, an offender coming into a  
7 neighborhood to target a specific victim must have knowledge of the neighborhood  
8 dynamics, including where and when people come and go throughout the day and night.<sup>5</sup>  
9 Here, the offender was able to commit four very high-risk attacks in four congested,  
10 residential neighborhoods, and was able to escape without being seen. His pre-planning  
11 was critical and it would have necessitated his being in those neighborhoods and around  
12 the victims' homes on prior occasions so he could watch and learn about the  
13 neighborhood.

14 The attacker would have paid close attention to who lived where, routines,  
15 vehicles, and who came and went from the neighborhood on both a regular and irregular  
16 basis. The level of comfort this offender had in each of these neighborhoods, which  
17 allowed him to move around freely and openly before and after the attacks suggests that  
18 he had experience and familiarity with the neighborhood which can only be acquired by  
19 spending time there on prior occasions.

20 Also, each of the attacks was perfectly timed, with narrow windows of  
21 opportunity to commit the crimes and flee without detection. To accomplish this, the  
22 offender needed "real time" information of the victims and the dynamics of their  
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<sup>5</sup> Exhibit A, pgs. 9-10.

1 residences and neighborhoods. It is clear that the offender spent a considerable amount  
2 of time in and around the victims' homes before he commenced with his attacks and his  
3 comfort inside and around these homes was integral. Indeed, entering a stranger's home  
4 is high-risk behavior for an offender because of the dangers it can pose. If he has never  
5 been inside the home, an offender faces numerous hazards and threats, which can  
6 jeopardize not only his safety, but also his ability to successfully commit the crime. He  
7 would be unfamiliar with the physical layout of the home, the location of safe rooms,  
8 where firearms and other weapons are kept, entrances and exits, dangerous pets, alarms,  
9 and other hazards. It is evident that each victim was stalked, watched, and surveilled by a  
10 skilled offender who was able to dwell in victims' shadows and slip in and out of the  
11 victims' neighborhoods and homes with impunity and without detection.  
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#### 14 **7. THE ATTACKS WERE EXTREMELY BOLD AND BRAZEN**

15 An offender's risk level is the degree of risk he assumes in order to commit his  
16 crimes.<sup>6</sup> His risks include: being seen or heard before, during, or after the crime; being  
17 identified, apprehended, injured or killed; and leaving behind incriminating evidence.  
18 This offender was extremely bold in each of these attacks. He assumed significant risks  
19 based on his choice of victims, by attacking and murdering them inside or immediately  
20 outside their own homes, spending time watching them prior to committing his crimes,  
21 accessing the victims in ways that could have been seen by others, and moving in and out  
22 of congested residential neighborhoods at times when people were coming and going.  
23 These were not knife attacks that occurred in remote or isolated areas with a low risk of  
24 being caught or detected. These attacks were committed in densely populated areas and  
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27 <sup>6</sup> Exhibit A, pg. 11.

1 under the noses of numerous potential witnesses and with a very real risk of being caught.

2 The possibility of being caught did not deter the attacker, which is a factor that resonates  
3 in each of these attacks.

4 **8. SINGLE OFFENDER**

5 There is no evidence, behavioral or forensic, to indicate there were multiple  
6 offenders at any given time responsible for these crimes.<sup>7</sup> In addition, these types of  
7 sexually motivated homicides, which include distinct and sexually deviant behaviors, are  
8 typically committed by single offenders. Further, Ms. Murphy, who survived her attack,  
9 reported only one offender.

10 **9. INSTRUMENTAL VIOLENCE**

11 Instrumental violence, the unique violence manifested in the murders of Ms.  
12 Pacaccio, Ms. Ellerin, and Mrs. Bruno, and in the attempted murder of Ms. Murphy, is a  
13 specific type of violence that is cold-blooded, purposeful, and goal-directed.<sup>8</sup> The  
14 emotional state of an offender engaged in instrumental violence is controlled.

15 Instrumental violence contrasts with reactive or affective violence, which is impulsive  
16 and emotional. In cases involving reactive violence, the offender is responding to a real  
17 or perceived threat and the violence is more impulsive and without planning.

18 Instrumental violence often involves strangers as victims and the offender was either not  
19 known to these victims, or not known to them as being dangerous and potentially lethal.  
20 There is no indication here that these victims engaged in behavior prior to their murders  
21 that could have been interpreted as provocative or threatening to the offender. This

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28 <sup>7</sup> Exhibit A, pg. 12.

<sup>8</sup> Exhibit A, pg. 13.

1 offender overpowered the victims suddenly, without warning, and gained control of them  
2 immediately. There was no time for interaction, which could have escalated into  
3 violence. This offender's violence was purposeful and goal-directed. This is evidenced  
4 by the injury patterns to Ms. Pacaccio, Ms. Ellerin, and Mrs. Bruno. The offender  
5 stabbed these women multiple times, using significant force that resulted in major  
6 internal damage and death. His stabbings were purposeful and his goal was to kill them.  
7

8 **10. BLITZ-AMBUSH STYLE ATTACKS**

9 All four victims were attacked in blitz-ambush style attacks.<sup>9</sup> The offender  
10 overpowered the victims quickly and with force. He chose a style of attack that allowed  
11 him to come up from behind and pounce on Ms. Pacaccio and Ms. Ellerin, most likely  
12 while they were standing, and pounce on Mrs. Bruno and Ms. Murphy as they were  
13 sleeping in bed, to stab and slash them numerous times.

14 Moreover, in a blitz-ambush style of attack, the victims would have likely been  
15 caught off-guard, overwhelmed, and terrified. The victims' responses could have been  
16 part of the offender's motivation for attacking them in this manner. These attacks  
17 enabled the offender to gain immediate control and maintain control throughout the  
18 attack. This style of attack seems excessive considering the offender was already armed  
19 with a large knife he used to control these victims.

20 **11. VICTIM CONTROL WITHOUT LIGATURES**

21 There was an absence of ligature marks on any of the four victims.<sup>10</sup> In some  
22 crimes of violence an offender may use some type of ligature to control a victim such as  
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28 <sup>9</sup> Exhibit A, pg. 15.

<sup>10</sup> Exhibit A, pgs. 15-16.

1 ropes, duct tape, or handcuffs. Controlling these victims was very important because  
2 otherwise the offender would not have been able to inflict such powerful, penetrating,  
3 and damaging injuries to them. The lack of ligatures suggests that the offender was  
4 confident he could control his victims without ligatures.

5 **12. CALLOUSNESS**

6 Callousness indicates a stunning lack of concern, regard, and empathy for others.  
7 This offender demonstrated a callous disregard for each of these victims.<sup>11</sup> He  
8 purposefully entered their homes or the area around their homes to attack and murder  
9 them. He purposefully and repeatedly stabbed all the victims with the necessary force to  
10 cause severe damage and with lethal injuries. The repeated, forceful, and deliberate  
11 stabbing would have been extremely painful and terrifying for these victims. This  
12 offender's attitude towards the victims – and what he did to them – shows a stunning  
13 absence of empathy and compassion for their suffering and pain. Moreover, the manner  
14 in which this offender left these victims after he was finished with them is also indicative  
15 of his callousness. After stabbing her multiple times, the offender left Ms. Pacaccio lying  
16 outside on her porch exposed to elements like weather, animals, etc., for hours until her  
17 father found her. He left Ms. Ellerin lying on the floor of her home – after stabbing her  
18 47 times, manipulating, and posing her dead body in a provocative, grotesque and  
19 demeaning way that was sexual in nature. He left Mrs. Bruno lying on her bed nude and  
20 exposed, with her breasts removed, one of her nipples placed on her mouth, and her body  
21 posed in a provocative, grotesque and demeaning position until her husband found her  
22 later that morning. This behavior was very degrading to Mrs. Bruno, as if the attacker  
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<sup>11</sup> Exhibit A, pgs. 17-18.

1 was mocking her in death. And but for Ms. Murphy's heroism, her boyfriend would have  
2 discovered her murdered as well. All four knife attacks bear this very distinctive feature.

3 **13. ATTACKING IN DARKNESS**

4 Each of the attacks occurred at night or in the early morning hours in darkness.  
5 However, in each instance, lights were on in or near the area where the perpetrator struck.

6 <sup>12</sup> Prior to Ms. Pacaccio returning home, her older brother switched on the outside porch  
7 light adjacent to the stoop where Ms. Pacaccio was murdered. This light would have  
8 illuminated that immediate area making the attack visible to anyone looking out of his or  
9 her window, driving by, or walking down the sidewalk. There was no evidence the  
10 offender attempted to disable this light. Lights were also on inside Ms. Ellerin's home  
11 immediately prior to the attack, and when her date arrived at approximately 10:45 PM, he  
12 looked inside the home and saw what he thought was red wine on the floor. This  
13 suggests that the lights were on during the murder, making it easier for anyone passing by  
14 to see inside. The fact that the offender did not turn off the lights suggests he was not  
15 deterred by having lights on and, in fact, needed the lighting to carry out his crime. In the  
16 Bruno homicide, first responding officers from the El Monte Police Department indicated  
17 both the kitchen and bedroom lights were on when they arrived, and Detectives  
18 confirmed that when they walked through Mrs. Bruno's apartment the bedroom light was  
19 on. Leaving lights on during a murder, although high-risk for the offender, allow him to  
20 see what he is doing to the victims. It also allows him to observe the victims' responses  
21 to his infliction of physical and emotional pain.

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28 <sup>12</sup> Exhibit A, pg. 21.

1                   **14. A KNIFE WAS THE WEAPON OF CHOICE**

2                   The offender's choice of a knife as a weapon in these cases is important.<sup>13</sup>

3                   Although a knife can be a lethal weapon, it is not necessarily an efficient one. A knife  
4                   requires getting up close to the victims and grasping them while stabbing. Victims will  
5                   most likely attempt to move away from a person stabbing them. During a struggle, an  
6                   offender can drop his knife and/or have it used against him. It can also take longer to kill  
7                   someone with a knife, and death is usually not instantaneous. Therefore, an offender  
8                   motivated to kill a victim must spend more time performing the act of killing. All of  
9                   these factors expose an offender to additional risks.

10                   **15. ABSENCE OF SEXUAL ASSAULT**

11                   Despite the fact that the murders of Ms. Pacaccio, Ms. Ellerin, and Mrs. Bruno,  
12                   and the attempted murder of Ms. Murphy are, in part, sexually motivated, there is a  
13                   noticeable absence of anal, vaginal, or oral sexual assault in these cases. The absence of  
14                   this behavior is very unique considering these are sexually motivated crimes.<sup>14</sup>

15                   In the three homicide cases, this offender controlled the victims by immediately  
16                   overpowering them. Once he controlled them, he could have sexually assaulted them, yet  
17                   he chose not to. *It is the absence of visible sexual assault under these circumstances that*  
18                   *resonates as a compelling similarity between all four attacks.*

19                   **16. THE VICTIMS' BODIES WERE NOT CONCEALED**

20                   The bodies of Ms. Pacaccio, Ms. Ellerin, and Mrs. Bruno were left where the  
21                   women died. There was no evidence to suggest this offender attempted to hide these

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28                   <sup>13</sup> Exhibit A, pgs. 21-22.

<sup>14</sup> Exhibit A, pgs. 22-23.

1 victims or relocate them to another part of the home or yard. There were no drag marks  
2 on the floors and no towels, blankets, or other items near the victims to suggest there was  
3 an effort to cover them. Hiding or concealing a victim's body is done to delay the  
4 discovery and identification of a body, to prevent forensic evidence from being obtained,  
5 to put time and distance between the offender and an investigation, and to prevent  
6 someone from finding a victim in a shocking position.<sup>15</sup> By leaving the victims' bodies  
7 openly displayed inside the victims' own homes or in the entryway to the home, it  
8 assured these victims would be found quickly. This offender wanted these women  
9 discovered exactly as he left them, particularly Mrs. Bruno and Ms. Ellerin. He wanted  
10 them found in the condition he left them in order to demean, degrade, and/or mock them,  
11 as well as to shock whoever found their bodies.  
12

13

## 14 **17. SIMILAR INJURY PATTERNS**

15

### **Tricia Pacaccio**

16 Ms. Pacaccio suffered 12 stab wounds. Three of these injuries were considered  
17 fatal and a fourth was possibly fatal. One of the fatal injuries to the victim included a  
18 penetrating injury to the left ventricle of her heart, the entry wound near the nipple of her  
19 left breast. The consulting Medical Examiner determined that the direction of the knife  
20 for five of the twelve wounds was multidirectional — left to right, front to back, and  
21 upward, resulting in significant injuries to the victim's heart, lung, aorta, and shoulder  
22 area. Ms. Pacaccio also received two stabbing injuries to her back and a fracture to her  
23 upper left arm. There were no injuries to her neck.  
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<sup>15</sup> Exhibit A, pg. 23.

1                   Ashley Ellerin

2                   Ms. Ellerin incurred a total of 47 stabbing injuries, 12 of them determined to be  
3                   fatal. The Medical Examiner described the direction of the knife as multidirectional. The  
4                   offender forced the blade downward, upward, forward, and left to right inside Ms.  
5                   Ellerin's body, which would have maximized the damage. The fatal injuries ranged in  
6                   depth from  $\frac{1}{2}$  to  $6 \frac{1}{2}$  inches with an average depth of  $3 \frac{1}{2}$  inches and a mode depth of 6  
7                   inches. The majority of the stabbing injuries (fatal and non-fatal) were to Ms. Ellerin's  
8                   back, neck, and the side of her head. Her stabbing injuries impacted multiple organs and  
9                   body systems, and caused significant damage. Ms. Ellerin also received 13 defensive  
10                  injuries involving her hands and right forearm in addition to two stabbing injuries to her  
11                  left knee.

14                  Maria Bruno

15                  Mrs. Bruno suffered a total of 17 stab wounds, four of which were fatal and three  
16                  possibly fatal. Only one of her injuries was described as a defensive injury. Mrs. Bruno's  
17                  toxicology report, however, indicated that at the time of her death her alcohol level was  
18                  elevated and, therefore, she may not have been capable of fighting back. The large  
19                  incised/slash-like fatal wound on her neck produced extensive damage. The size of this  
20                  wound was approximately 4 inches vertically and 5 inches horizontally. This fatal injury  
21                  perforated, transected, and retracted veins and arteries. It also severed the musculature  
22                  and portions of the cervical vertebrae, and left a large defect in the victim's cervical  
23                  spine. It was a multidirectional path with a depth of approximately 2.5 inches. The  
24                  remaining fatal injuries were in the victim's chest area/right intercostal margin. These  
25                  stab wounds caused damage to multiple organs as well as the skeletal system. The  
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1 directions of these wounds were described as multi-directional. The mean depths of these  
2 three fatal injuries were 5.3 inches. The wounds described as "possibly fatal" were all to  
3 the neck. Two of these stab wounds were multi-directional and the average depths of  
4 these injuries were approximately 1.8 inches. The post-mortem mutilation included the  
5 excision of the victim's left and right breasts, areolas, nipples, and adjacent skins as well  
6 as the underlying breast implants. These body parts were subsequently accounted for —  
7 the offender had placed them on various parts of the victim's body. This behavior is  
8 described as "posing" the victim. Mrs. Bruno also suffered bruising to her lower legs.

9  
10 **Michelle Murphy**

11 Because Ms. Murphy fought off her attacker, her injury patterns are different from  
12 the other three victims. Ms. Murphy's non-lethal injuries could be classified as  
13 defensive. During her struggle with him, Ms. Murphy suffered numerous sharp, cutting  
14 injuries to her arms, hands, and fingers. However, she did receive one stabbing wound to  
15 her sternum area, which would not be considered defensive.

16  
17 **Summary**

18 In sum, the injury patterns to Ms. Pacaccio, Ms. Ellerin, and Mrs. Bruno are  
19 similar in the following ways:<sup>16</sup>

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- 21 • Multiple stab wounds — excessive stabbing, which was above and beyond what  
22 would be necessary to control and/or kill the victims.
- 23 • Multiple *fatal* stab wounds to each victim.
- 24 • Multi-directional knife wounds — front to back, upward, downward, left to right.

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16 Exhibit A, pgs. 24-26.

1           • Deep penetration of the knife.

2           • Damage to multiple organs and/or the skeletal system, as well as other systems of

3           the victims' bodies.

4           • Multiple stab wounds to the backs of Ms. Pacaccio and Ms. Ellerin, who were

5           likely standing at the time their attacks began. Mrs. Bruno and Ms. Murphy were

6           both in bed at the time of their attacks and suffered no injuries to their backs.

7           • Ms. Ellerin and Ms. Murphy suffered the most defensive injuries. Mrs. Bruno

8           had one defensive injury, and none of the injuries to Ms. Pacaccio were

9           specifically identified as defensive in nature.

10

11           **18. ABSENCE OF MOTIVE FOR FINANCIAL GAIN**

12           Violent crimes are dynamic events that change as the offender's interaction with

13           the victim changes. An offender's motivation is generally defined as his reason(s) for

14           committing the crime.<sup>17</sup> Violence is complex and there are multi-factorial causes for it.

15           Therefore, an offender is not likely driven by a singular motive during the commission of

16           a crime, but rather multiple motives. When assessing a violent crime scene, motivations

17           are inferred from the offender's behavior at the scene as well as the absence of certain

18           behaviors. Here, there were items of value left in the victims' homes and on their person,

19           including jewelry and cash. There was no ransacking inside the homes to indicate the

20           offender was searching for something specific or randomly searching for items like

21           drugs, bank papers, computers, phones, or other items of value. Ms. Pacaccio, Ms.

22           Ellerin, and Ms. Murphy had cars parked close to their residences, which the offender

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25           <sup>17</sup> Exhibit A, pgs. 26-28.

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1 could have taken, but did not. Ms. Pacaccio had her car keys with her when she was  
2 found, yet her car was not disturbed.

3 **19. SEXUAL MOTIVATION**

4 Although there was no evidence that the offender sexually assaulted or attempted  
5 to sexually assault any of these victims vaginally, anally, or orally, all of the crimes were  
6 nevertheless committed for sexual gratification.<sup>18</sup> All of the victims were attractive  
7 women. They were each alone at the time they were attacked. Mrs. Bruno and Ms.  
8 Murphy were nude when attacked. Ms. Ellerin and Ms. Murphy had just gotten out of  
9 the shower. Ms. Ellerin and Mrs. Bruno had engaged in sexual intercourse with male  
10 partners shortly before their murders and this offender was likely aware because he was  
11 watching or listening. The offender attacked these victims by physically overpowering  
12 them. His body was on top of Mrs. Bruno and Ms. Murphy as he was attacking them.  
13 He would have been wrapped around Ms. Ellerin and Ms. Pacaccio as he was  
14 overpowering them. When he was thrusting his knife into the victims, he would have  
15 been able to feel their bodies and hear, as well as feel, their reactions to being stabbed.  
16 Three of the victims had stab wounds to their breasts and Mrs. Bruno had her breasts and  
17 nipples removed. Ms. Ellerin and Mrs. Bruno were posed after death in provocative,  
18 grotesque and demeaning poses that were sexual in nature. All of this behavior is  
19 indicative that these crimes were sexually motivated.

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28 <sup>18</sup> Exhibit A, pgs. 28-32.

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IV.

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**THE ATTACKS ON TRICIA PACACCIO, ASHLEY ELLERIN, MARIA BRUNO,**  
3  
**AND MICHELLE MURPHY BEAR THE SAME SIGNATURE AND SHOULD BE**  
4  
**ADMITTED TO PROVE DEFENDANT GARGIULO'S "IDENTITY" AS THE**  
5  
**PERPETRATOR IN ALL OF THE ATTACKS**

6  
The similarities between the Pacaccio murder and the charged offenses are  
7  
sufficient to meet the highest 1101(b) similarity threshold—identity—because the past  
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act and the current offenses demonstrate an unmistakably high degree of similarity and  
9  
show Gargiulo's distinct animus toward women and a distinct methodology of selecting,  
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stalking, manipulating, and killing beautiful female victims, all in the same manner.

11  
The admission of other acts as evidence to prove identity is a matter within the  
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sound discretion of the trial court. *E.g. Kipp, supra*, 18 Cal. 4<sup>th</sup> at 369; *People v. Haston*,  
13  
(1968) 69 Cal. 2d 233, 247 (*citing cases*). To be relevant on the issue of identity, the  
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uncharged crimes must be *highly similar* to the charged offenses—the pattern and  
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characteristics being so distinctive so as to rise to the level of a “signature” and support  
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the inference that the same person committed both acts. *Ewoldt, supra*, 7 Cal. 4th at 402-  
17  
03; *People v. Hovarter* (2008) 44 Cal. 4th 983, 1003.

18  
The strength of the identity inference depends on two factors: (1) The *degree of*  
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*distinctiveness* of individual shared marks, and (2) the *number* of minimally distinctive  
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shared marks. *Thornton, supra*, 11 Cal. 3d at 756; *Kipp, supra*, 18 Cal. 4th at 369-70;  
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*Haston, supra*, 69 Cal. 2d at 246. Once the trial court finds a distinctive modus operandi  
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or “signature” in the type and placement of wounds, the defendant's conduct, and the  
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defendant's connection to the victims, evidence of the defendant's other crimes is  
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ordinarily admissible to identify the defendant as the perpetrator of the charged offense.

*E.g. Haston*, 9 Cal. 2d 233; *accord Ewoldt, supra*. There is no requirement that the charged and uncharged crimes be “mirror images” of each other. *Carter, supra*, 36 Cal. 4<sup>th</sup> at 1148. Nor is there authority to require that one single set of distinctive marks be common to all the charged counts. *See id.; accord Kraft, supra*, 23 Cal. 4<sup>th</sup> at 1061. The fact that one victim survived does not negate the similarities that are sufficient for an 1101(b) inference of identity. *People v. Walker* 139 Cal. App. 4<sup>th</sup> 804-05; *Gray, supra*, 37 Cal. 4<sup>th</sup> at 168 (victims of the defendant’s uncharged offense in 1983 survived their ordeal but the court did not strongly distinguish the defendant’s 1987 charged offense that resulted in the death of his victim). Rather, features or characteristics may be considered separately in a one-to-one comparison, or they may be considered in their totality in which the combination of features yields a sum greater than its parts—namely, a signature. *Haston*, 69 Cal. 2d at 245-46; *Thornton, supra*, 11 Cal. 3d at 756; *People v. Earle* (2009) 172 Cal. App. 4<sup>th</sup> 372, 394.

Numerous courts have applied this “aggregate” approach in analyzing the degree and distinctiveness of similarities between the other act and the charged offense; such an approach is useful because similarities become more meaningful when viewed in totality, rather than in piecemeal parts, leading to the reasonable inference that the defendant was the person who committed the crimes. *People v. Medina* (1995) 11 Cal. 4<sup>th</sup> 694, 748; *Hovarter, supra*, 44 Cal. 4<sup>th</sup> at 1004.

The *number* of minimally distinctive shared marks does not emphasize the *quantity* of shared characteristics, but rather the number of “minimally distinctive” marks versus those of high distinctiveness, which requires sorting and arranging the shared traits

1 into a range: those traits that are *minimally distinctive* (common to the type or general  
2 variety of crime); those that are *distinctive* (not common among the type of crime); and  
3 those that fall somewhere in between. *Thornton, supra*, 11 Cal. 3d at 756.

4 While the comparison of similarities between charged and uncharged offenses lies  
5 at the heart of any Evidence Code section 1101(b) analysis, *how* the trial court conducts  
6 this comparison is as critical as the similarities themselves. In *People v. Kraft, supra*, the  
7 court emphatically dismissed the defense's argument that the similarity analysis must  
8 proceed first by looking for characteristics *not shared* by a particular offense, thereby  
9 disqualifying that offense from consideration on identity. *Kraft, supra*, 23 Cal. 4<sup>th</sup> at  
10 1061 (referring to "*modus operandi*" as synonymous with "identity" in this context). The  
11 court noted that "the probative value of the evidence of one uncharged offense '[was] not  
12 significantly diminished by the presence of certain marks of *dissimilarity* between the  
13 uncharged and charged offenses.'" *Id.*, citing *Thornton, supra*, 11 Cal. 3d at 758,  
14 (emphasis in original); *accord Carter, supra*, 36 Cal. 4<sup>th</sup> at 1148 (finding "distinctions" or  
15 dissimilarities went to the *weight* of the evidence, not the *admissibility*, and did not  
16 preclude admission of other murders to prove identity).

20 Thus the emphasis must be on a similarity comparison done in the positive —  
21 comparing any similarities and delving into its degree of distinctiveness — and *not* in the  
22 negative — actively searching for dissimilarities. The court in *Kraft* concluded that there  
23 was no error in presenting the jury with the *modus operandi* or identity theory. "[G]iven  
24 the commonality of certain features of the various offenses present in the record of this  
25 case, the task of determining the degree of distinctiveness and the number of such  
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1       circumstances necessary to establish defendant's identity as the perpetrator of these  
2       offenses was a matter for the jury." *Kraft, supra*, 23 Cal. 4<sup>th</sup> at 1062.

3       Finally, while the prosecution may suggest numerous similarities, a trial court  
4       need not accept all of them. Where there exists a distinct similarity to satisfy the  
5       "signature" threshold, the evidence is admissible to prove identity. In *Hovarter, supra*,  
6       44 Cal. 4th at 983, a capital murder, kidnapping, and rape case, the prosecution offered  
7       16 different points of similarity between the charged offenses and the defendant's prior  
8       convictions for rape, kidnapping, and attempted murder. Although the trial court did not  
9       accept the argument that all 16 points were of equal importance, noting that many were  
10       "common to the classes of crime charged," the court nevertheless found many factors  
11       relatively unique, suggesting that the same person committed both sets of crimes. The  
12       evidence was thus properly admitted to prove identity. *Id.* at 1003.

15       Once the trial court compares the similarities — singularly or in the aggregate,  
16       without looking for similarities *not* present — and finds a distinctive *modus operandi* or  
17       "signature" common to the charged crime and other act, evidence of the defendant's other  
18       crimes is then admissible to identify the defendant as the perpetrator of the charged  
19       offense, subject to a 352 balancing test. *E.g. Ewoldt, supra*, 7 Cal. 4th at 380.

21       The four knife attacks in this case bear at least 19 similarities, as detailed above,  
22       and rise well above the required standard for admissibility as a "signature," particularly in  
23       light of the fact that the attacks were perpetrated on victims whom Gargiulo knew and  
24       whom resided within steps of his residences.

1                   A. The Signature

2                   The circumstances, victimology, crime characteristics, and geographic proximity  
3 of Gargiulo's residences to each of the victims, his connection with each of the victims,  
4 and the fact that his DNA was recovered from three of the crime scenes, taken in the  
5 aggregate, create an inescapable web of similarities from which emerge a "pattern" of  
6 characteristics "so unusual and distinctive" that only Gargiulo could have committed the  
7 offenses.

8                   Indeed, the manner in which Gargiulo murdered Tricia Pacaccio mirrors how  
9 Michelle Murphy was attacked and how Maria Bruno and Ashley Ellerin were slain.  
10 Gargiulo attacked the victims under cover of darkness, at the victims' homes, in  
11 congested and residential neighborhoods. These were blitz-ambush style attacks.  
12 Gargiulo quickly overpowered the victims with brute force. He chose a style of attack  
13 that allowed him to come from behind and pounce on Ms. Pacaccio and Ms. Ellerin, most  
14 likely while standing, and pounce on Mrs. Bruno and Ms. Murphy as they slept in bed.  
15 Gaining immediate control of the victims also allowed him to be physically close to them  
16 while allowing him to use the strength of his body to inflict the damaging and lethal  
17 injuries.

18                   In addition, Gargiulo targeted petite, attractive, outgoing, young women, between  
19 the ages of 18 and 35, who were alone at the time of their attacks. The times and areas of  
20 the crimes (cover of darkness inside or immediately outside their residences), the use of a  
21 specific weapon (knife) to target a specific area of the body (upper torso) in a specific  
22 manner (repeated, blitz-style attacks leading to double-digit stab wounds)—all are added  
23

1 to a list of similarities. At this point, the aggregate effect not only satisfies, but also  
2 surpasses, *Ewoldt's* "signature" threshold.

3 Add the fact that Gargiulo lived very close to each victim and it becomes much  
4 more than coincidence. It is clear evidence that proves Gargiulo's signature and *modus*  
5 *operandi* includes surveilling the victims and their neighborhoods and homes to gain  
6 first-hand familiarity with the layout of their homes and their routines and dynamics.  
7  
8 Indeed, it is well settled that a defendant's connection to the victims and his proximity to  
9 them can establish identity. For example, in *People v. Medina, supra*, 11 Cal. 4<sup>th</sup> at 694,  
10 a capital murder case, the court upheld the admission of uncharged robberies and murders  
11 under Evidence Code section 1101(b) to establish identity. The crimes each involved the  
12 robbery and murder of a convenience store employee whose workplace was located along  
13 the route between the defendant's sister's homes, where he stayed during the time the  
14 various offenses were committed. Also, in *People v. Miller* (1990) 50 Cal. 3d 954, the  
15 court focused on geographic proximity and the timing of the victim attacks to admit other  
16 acts evidence. The most distinctive similarities were the victims' homosexuality and the  
17 fact that most of the victims were attacked shortly after leaving gay bars. The court  
18 found that "[t]hese two characteristics by themselves create at least a reasonable  
19 suspicion that the crimes are related and somehow set apart from others of the same  
20 general variety." *Id.* at 988. The court then elaborated on how the geographic proximity  
21 of the attacks added to the similarities: "[T]he likelihood of a particular group of  
22 geographically proximate crimes being unrelated diminishes as those crimes are found to  
23 share more and more common characteristics. When, as here, those characteristics  
24

1 combine to suggest a common *modus operandi*, their collective significance may be  
2 substantial.” *Id.* at 989 (using “*modus operandi*” as a synonym for “identity”).

3 In addition, the doctrine of chances can also support an inference of a “signature”  
4 so as to support the introduction of Evidence Code section 1101(b) evidence for the  
5 purpose of proving identity. *People v. Erving* (1998) 63 Cal. App. 4th 652. In *Erving*, the  
6 doctrine of chances was properly used to justify the admission of uncharged fires to prove  
7 the defendant’s identity and intent. The defendant lived in four different, geographically  
8 distinct neighborhoods; the arson fires regularly occurred either at her home or within  
9 easy walking distance; the fires were set during her residency and stopped when she  
10 moved; and, amongst other eyewitness evidence, in one neighborhood she was seen  
11 moving to set a fire. *Id.* The court applied the doctrine of chances, finding that “it is  
12 extremely unlikely that, through bad luck or coincidence, an innocent person would live  
13 near so many [similar crimes], occurring so frequently, in so many different  
14 neighborhoods.” *Id.* at 663. The more rational conclusion was that the defendant set the  
15 fires. *See also People v. Kelly* (2007) 42 Cal. 4th 763, 786 (“[i]t would have been a  
16 remarkable coincidence if, shortly after [the] defendant violently assaulted two women he  
17 befriended at the fitness center, some different person happened to use that same  
18 apartment to assault another woman [the] defendant had befriended at the fitness  
19 center”); *Kipp, supra*, 50 Cal. 4th at 1330 (rejecting the defendant’s contention that it was  
20 “purely coincidence” that his victims were all women.) *Kelly* and *Erving* thus  
21 demonstrate that repeated circumstances, behavior by the defendant, witness testimony,  
22 and rational deduction can all contribute toward the finding of a “signature” common  
23  
24  
25  
26  
27  
28

1 between charged and uncharged crimes, thus allowing for the admission of other acts  
2 evidence to prove identity.

3 V.

4 **EVIDENCE OF THE PACACCIO MURDER PROVES THAT GARGIULO'S**  
5 **ATTACKS ON ASHLEY ELLERIN, MARIA BRUNO, AND MICHELLE**  
6 **MURPHY WERE WILLFUL, DELIBERATE, AND PREMEDITATED**

7  
8 The Court should admit evidence of the Pacaccio murder pursuant to Evidence  
9 Code section 1101(b) to prove the separate, distinct, and disputed intent elements of  
10 willfulness, premeditation, and deliberation, and that the knife attacks on Ashley Ellerin,  
11 Maria Bruno, and Michelle Murphy were committed intentionally and with express  
12 malice. The Pacaccio murder is admissible pursuant to Evidence Code section 1101(b)  
13 because it is "sufficiently similar [to the charged knife attacks] to support the inference  
14 that the defendant ""probably harbor[ed] the same intent in each instance." *People v.*  
15 *Rogers* (2013) 57 Cal. 4th 296. When evidence of prior bad acts is offered to prove  
16 intent or subsidiary elements such as premeditation, "the act is conceded or assumed;  
17 what is sought is the state of mind that accompanied it." *Ewoldt, supra*, 7 Cal. 4<sup>th</sup> at 402.  
18 The incidents need not be identical, only "sufficiently similar." *Id.* Similarly, when past  
19 crimes shed "great light on the defendant's intent at the time he or she committed that  
20 offense," if the circumstances of the two crimes are "substantially similar even though  
21 not distinctive," the past offense should be admitted. *People v. Demetrulias* (2006) 39  
22 Cal. 4th 1, *cert denied*, (2007) 549 U.S. 1222.

23  
24 In *People v. Steele, supra*, a jury convicted the defendant of first degree murder  
25 for the brutal, repeated stabbing of a mentally disabled woman with a knife. At trial, the

1 court admitted evidence that the defendant, 17 years earlier, had been convicted of  
2 second-degree murder for stabbing to death a female babysitter under similar  
3 circumstances. *Steele, supra*, 27 Cal. 4th at 1238-39. The court upheld the admission of  
4 the other-acts evidence to prove the defendant's intent:

5 The two killings were similar enough to make the earlier one relevant to the  
6 mental state with which defendant committed the later one. The least degree of  
7 similarity between the crimes is needed to prove intent. As we explained  
8 in *Carpenter* and *Robbins*, the doctrine of chances teaches that the more often  
9 one does something, the more likely that something was intended, and even  
10 premeditated, rather than accidental or spontaneous. Specifically, the more  
often one kills, especially under similar circumstances, the more reasonable  
the inference the killing was intended and premeditated. *Id.* at p. 1244  
(emphasis added).

11 In the context of Evidence Code section 1101(b) evidence for the purpose of  
12 showing intent, *Steele* stated the logical axiom that the more often a defendant repeats a  
13 behavior, and the greater the similarity with each iteration, the more "reasonable" the  
14 circumstantial inference that the defendant not only *intended* the result, but acted with  
15 *premeditation and deliberation.* *Id.*

16 Even though the prior crime in *Steele* lacked premeditation, the court held it was  
17 nonetheless admissible to prove premeditation under the doctrine of chances:

18 [T]he doctrine of chances is based on a *combination* of similar events.... The fact  
19 defendant had previously killed with a knife strengthens the inference that he  
20 considered the possibility of homicide from the outset when he entered the  
21 victim's house with a knife.... The fact that defendant killed twice in the same  
22 distinctive manner—a cluster of seven or eight stab wounds in the chest or  
23 abdomen combined with manual strangulation—strengthens the inference that  
24 he had a calculated design to kill precisely that way. *Id.* at 1244, (emphasis  
added).

25 Thus, one crime may nonetheless be offered to show that a defendant likely  
26 harbored the same intent, premeditation, and deliberation in another. The fact that the  
27 defendant in *Steele*, after murdering a babysitter, again murdered years later another  
28 defendant

1 woman under similar circumstances — a young woman, killed with a knife, using  
2 clustered stab wounds and manual strangulation — resulted, pursuant to the doctrine of  
3 chances, in the reasonable inference that he harbored the same intent, had “a *calculated*  
4 *design* to kill precisely that way,” and “considered the possibility of homicide *from the*  
5 *outset when he entered the victim’s house with a knife.*” *Id.*, (emphasis added). These  
6 parallels were probative of premeditated and deliberate murder.  
7

8 Notably, it is the multiplier effect of repeating similar acts, and not the *order* in  
9 which the crimes were committed, that triggers the doctrine of chances, allowing the  
10 prosecution to offer other-crimes evidence to prove intent, premeditation, and  
11 deliberation in this manner. *Id.*  
12

13 Just like the defendant’s behavior in *Steele*, Gargiulo’s repeated behavior supports  
14 the reasonable inference that he harbored the same intent and premeditated plan of attack  
15 in killing Ms. Ellerin and Mrs. Bruno and in attempting to kill Ms. Murphy as he did in  
16 killing Ms. Pacaccio. In all four instances, Gargiulo began by stalking the female victim  
17 extensively, trespassing on her living space, surprising the victim, and stabbing her.  
18 Therefore, the Pacaccio murder, utilizing the doctrine of chances theory of *Steele*, is  
19 relevant to prove the disputed elements of willful, deliberate, and premeditated murder  
20 and express malice.  
21

22 VI.  
23

24 **EVIDENCE OF THE UNCHARGED ACTS SHOULD NOT BE**  
25 **EXCLUDED UNDER EVIDENCE CODE § 352**

26 The third prong of an Evidence Code section 1101(b) analysis for introducing  
27 evidence to show motive and identity requires a balancing test under Evidence Code  
28

1 section 352 (emphasis added):

2 "The court in its discretion may exclude evidence if its probative value is  
3 *substantially* outweighed by the probability that its admission will (a) necessitate  
4 undue consumption of time or (b) create *substantial* danger of *undue* prejudice, of  
5 confusing the issues, or of misleading the jury."

6 Thus, under the language of the statute itself, if the probative value, on balance, is  
7 equal to the countervailing probabilities outlined in Evidence Code section 352, the  
8 evidence ought to be admitted. Even if the countervailing probabilities *slightly* outweigh  
9 the probative value, the evidence still should be admitted. It is only when the probability  
10 of undue consumption of time or undue prejudice *substantially* outweighs the probative  
11 value that the court may, in its discretion, exclude the evidence.

12 Four factors are to be considered in comparing the probative value to the  
13 prejudicial impact of Evidence Code section 1101(b) evidence:

14 1) The evidence is more probative if the uncharged misconduct is to be proved  
15 from a source independent of the evidence of the charged offense. *Ewoldt*, 7 Cal.  
16 4th 404. This factor is easily satisfied, as the sources of information for  
17 Gargiulo's uncharged crime are completely independent of the sources for the  
18 charged crimes.

20 2) Uncharged evidence is more prejudicial if it did not result in a criminal  
21 conviction. *Id.* at 405. Significantly here, the evidence was not presented before  
22 a jury and rejected but rather Gargiulo's uncharged crime was never brought  
23 before a jury. In this case, "a jury may consider properly admissible 'other  
24 crimes' evidence so long as it finds 'by a preponderance of the evidence' that the  
25 defendant committed those other crimes." *Alcala v. Superior Court* (2008) 43  
26 Cal. 4th 1205, 1224, n.14 (citation omitted).

1           3) Where the "testimony describing the defendant's uncharged acts [is] no  
2           stronger and no more inflammatory than the testimony concerning the charged  
3           offenses," any potential for prejudice is decreased. *Id.* Here, the testimony  
4           describing the murder of Ms. Pacaccio is no stronger or more inflammatory than  
5           the murders with which Gargiulo is charged. It is probably less inflammatory,  
6           since Ms. Pacaccio was not dismembered in the manner of Mrs. Bruno.  
7

8           4) The lapse of time between the charged and uncharged offense may lessen its  
9           probative value. *Id.* This factor goes to weight, not admissibility. *Id.* at 397-98.  
10           Furthermore, the courts have held that cases which are twelve or fifteen years old  
11           may not be too remote. *Id.* at 405. Although the murder of Ms. Pacaccio  
12           occurred eight years before the murder of Ms. Ellerin, the lapse of eight years  
13           between the Pacaccio murder and the Ellerin murder does not mean that evidence  
14           of the Pacaccio murder should be excluded.  
15

16           The above factors strongly favor admissibility in the instant case. Weighing all  
17           the factors, there is absolutely no substantial danger of undue prejudice, confusing the  
18           issues, or misleading the jury. Further, the probative value clearly outweighs the modest  
19           amount of time that admission of this evidence would require.  
20

21           Finally, there is little danger that presentation of Gargiulo's prior offenses would  
22           constitute needlessly cumulative evidence. Moreover, trial courts are *not required* to  
23           exclude *all* cumulative evidence, "if evidence has substantial relevance to prove material  
24           facts which are hotly contested and central to the case, it is not 'merely cumulative.'"  
25  
26           *People v. Thompson, supra, 45 Cal. 3d 115-16; accord People v. Anderson, supra, 43*  
27           *Cal. 3d at 1137; People v. Lang (1989) 49 Cal. 3d 991, 1016.* Even where testimony  
28

1 portrays a defendant as a dangerous person inclined to acts of violence, a trial court is not  
2 obliged *for this reason* to exclude it, especially where the court carefully weighed the risk  
3 of undue prejudice against the probative value of the evidence. *Lang, supra*, 49 Cal. 3d  
4 at 1016; *see People v. Karis* (1988) 46 Cal. 3d 612, 637-38. Even assuming, *arguendo*,  
5 that some of Gargiulo's prior acts *were* cumulative, the highly probative value of the  
6 evidence to establish identity, motive, consciousness of guilt, premeditation, and intent  
7 far outweighs any slight judicial delay or duplicative testimony. Accordingly, the  
8 evidence should be allowed.

9  
10 The nature of Evidence Code section 1101(b) evidence, such as here when offered  
11 to show intent and identity, is simply that "*the court must exercise its discretion, not that*  
12 *it must always exclude the evidence.*" *Steele, supra*, 27 Cal. 4<sup>th</sup> at 1245, (emphasis  
13 added); *accord Carpenter, supra*, 15 Cal. 4th at 380. Weighing all the factors, there  
14 exists no danger that undue prejudice, confusion of the issues, or misleading the jury  
15 would *substantially outweigh* the highly probative value of the Pacaccio murder to prove  
16 identity and the subsidiary intent elements of willfulness, premeditation, and deliberation.  
17  
18 Further, the probative value clearly outweighs the modest time that admission of this  
19 evidence would require. Finally, the People offer the prior bad act not for propensity  
20 purposes, but only for the limited purpose of proving the requisite elements of a first-  
21 degree murder case. Accordingly, the evidence should be allowed.

22  
23 In further support of admitting the Pacaccio murder and to mitigate any prejudice  
24 to Defendant Gargiulo, the People request that the Court issue a limiting instruction to  
25 ensure that the jury uses the Pacaccio murder not for improper propensity purposes, but  
26 to prove Gargiulo's identity as the killer and that he harbored the requisite intent elements  
27  
28

1 of first-degree murder — willfulness, premeditation, and deliberation. Limiting  
2 instructions, such as CALCRIM 375 or CALJIC 2.50, effectively protect a defendant  
3 from undue prejudice and restrain the jury from misusing Evidence Code section 1101(b)  
4 evidence. *Kipp, supra*, 18 Cal. 4<sup>th</sup> at 371-72; *People v. Collie* (1981) 30 Cal. 3d 43, 64;  
5 see CALCRIM 852-853, 1191; CALJIC 2.50.1-2.50.2.

6 A trial court is under no obligation to instruct *sua sponte* on the limited  
7 admissibility of evidence of past criminal conduct except in the most extraordinary of  
8 cases. *Collie, supra*, 30 Cal. 3d 63-64. Nevertheless, presenting the jury with  
9 instructions based on CALCRIM 375 or CALJIC 2.50 will provide the jury with firm  
10 guidelines on how—and how *not*—to apply the other acts evidence from the Pacaccio  
11 murder. “Evidence of past offenses may not improperly affect the jury’s deliberations if  
12 the facts are equivocal, the charged offense is dissimilar, or the evidence is obviously  
13 used to affect one or more of the many legitimate purposes for which it can be  
14 introduced.” *Collie, supra*, 30 Cal. 3d at 64. The addition of limiting instructions,  
15 therefore, would serve only to further clarify the jury’s role in evaluating the prior acts  
16 evidence from the Pacaccio murder in its consideration of whether defendant Gargiulo is  
17 guilty beyond a reasonable doubt. *See generally Id.* 63-64; *People v. Haylock* (1980) 113  
18 Cal. App. 3d 146, 150.

19 On appeal, a trial court’s admission of Evidence Code section 1101(b) evidence,  
20 being essentially a determination of relevance, is reviewed under an abuse of discretion  
21 standard. *E.g. Id; Ewoldt, supra*, 7 Cal. 4<sup>th</sup> at 404-05; *Scheid, supra*, 16 Cal. 4<sup>th</sup> at 14;  
22 *U.S. v. Khan* (9th Cir. 1993) 993 F.2d 1368, 1376. The admission of other acts evidence  
23 to prove identity is a matter within the sound discretion of the trial court. *E.g. Kipp,*  
24

*supra*, 18 Cal. 4<sup>th</sup> at 369; *accord Haston, supra*, 69 Cal. 2d at 247 (citing cases). There must be sufficient similarity between the charged and uncharged crimes to support a “rational inference” of identity, common plan or scheme, or intent. *Kipp, supra*, 18 Cal. 4<sup>th</sup> 369. A court abuses its discretion when its’ ruling “falls outside the bounds of reason.” *Kipp, supra*, 18 Cal. 4<sup>th</sup> at 371.

When dealing with Evidence Code section 1101(b) evidence, some degree of prejudice to the defendant will inherently arise. *Ewoldt, supra*, 7 Cal. 4th at 404. But the application of section 352's balancing test, *Ewoldt*'s four-factor analysis, and jury instructions like CALCRIM 375 or CALJIC 2.50, will prevent the misuse of such evidence, ensure that the jury is best equipped with the proper knowledge and guidance to engage in full and fair deliberation, and reduce the potential prejudice to the defendant from admission of other acts evidence. *Kipp, supra*, 18 Cal. 4<sup>th</sup> at 372; *Ewoldt, supra*, 7 Cal. 4<sup>th</sup> at 404; *accord People v. San Nicolas* (2004) 34 Cal. 4<sup>th</sup> 614, 668-69.

The People respectfully request, then, that the Court instruct the jury in line with CALCRIM 375 or CALJIC 2.50.

VII.

## CONCLUSION

The evidence of Gargiulo's uncharged crime meets each prong of the analysis set forth under Evidence Code section 1101(b). It is material, relevant, and the probative value far outweighs the prejudicial effect. This evidence will assist the Court and the jury in performing their roles effectively. Thus, the People request that the Court permit the jury to hear and consider this evidence at trial.

1 Dated this 5<sup>th</sup> day of November, 2014

2 Respectfully submitted,

3 JACKIE LACEY  
4 District Attorney of Los Angeles County

5   
6

7 By   
8 DANIEL P AKEMON  
9 Deputy District Attorney  
10 Attorney for Plaintiff

11   
12

13 By   
14 GARRETT DAMERON  
15 Deputy District Attorney  
16 Attorney for Plaintiff

**DECLARATION OF SERVICE BY MAIL**

The undersigned declares under the penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 210 W. Temple Street, Los Angeles, California 90012. On the date of execution hereof I served the attached document by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the County of Los Angeles, California, addressed as follows:

*Charles Lindner, Esq.  
2801 Ocean Park Blvd.  
Suite 247  
Santa Monica, CA. 90405*

Executed on this 12<sup>TH</sup> Day of November, 2014, at Los Angeles, California.

DAN AKEMON

# **Exhibit “A”**

**Tricia Pacaccio - Victim (August 14, 1993) (Deceased);  
Ashley Lauren Ellerin – Victim (February 21, 2001) (Deceased);  
Maria Bruno – Victim (December 1, 2005) (Deceased);  
Michelle Murphy – Victim (April 29, 2008) (Attempted Murder);  
*Serial Murder Assessment - Case Linkage***

**June 13, 2014**

Mary Ellen O'Toole, PhD, is a retired FBI Agent and a member of the FBI's Behavioral Analysis Unit (BAU). She currently works as a private Forensic Behavioral Scientist – Consultant. Dr. O'Toole prepared the following *Criminal Investigative Analysis – Case Linkage*. This analysis is based upon a review of case materials and other information submitted by the Los Angeles County District Attorney's Office. Case materials include investigative reports, crime scene photographs, Medical Examiners' reports, forensic reports, and other related case materials. It is also based on a personal visit to each of the above crime scenes, and on-scene discussions with investigators from the Los Angeles Sheriff's Department, the Los Angeles Police Department, the Cook County Sheriff's Department and Prosecutors from both the Los Angeles County District Attorney's Office, and the Cook County Illinois State's Attorney's Office. The observations, opinions, and analysis contained in this assessment are the result of knowledge drawn from personal investigative experience, educational background, specialized training, and research conducted by Dr. O'Toole during her 28 years as an FBI Agent including 14 years as an FBI Criminal Investigative Analyst with the FBI's Behavioral Analysis Unit (BAU). Her analysis and assessment is based upon information available at the time this report was prepared, and assumes that the information set forth is valid and complete. Should additional information or case materials become available at a later date, certain aspects of this analysis and linkage may be subject to modification or change.

### **PURPOSE OF ANALYSIS**

The purpose of the analysis was to determine if there were similar, unique offender behaviors present in the three homicide cases involving Tricia Pacaccio, Ashley Ellerin, Maria Bruno, the attempted homicide of Michelle Murphy, and if these behaviors were unique enough to support an expert opinion that these crimes are linked to the same offender.

### **INTRODUCTION**

#### **Signature Behavior and MO Behavior**

*These crimes manifest a uniquely similar cluster of Signature and MO behaviors.*

Signature behaviors are behaviors at a crime scene that are unnecessary to the successful completion of the crime but are done in the service of the offender's psychological, emotional, and sexual

needs. These behaviors become part of the motivation for the crime(s) and can be referred to as an offender's "Signature" (Douglas et al. 2006; Hazelwood et al. 2003).

The MO or modus operandi is a behavior or set of behaviors the offender engages in before and during a crime because they keep him from getting caught and ensure he will be able to successfully complete the crime. An offender's MO behavior can include cautious behaviors that keep him from being caught or seen, behaviors that enable him to control the victim, and behaviors that maximize his ability to escape the scene undetected. MO behaviors can change over time as the offender improves his skills. Some behaviors can serve as both MO and Signature behaviors (Douglas et al. 2006). For purposes of this assessment, the behaviors seen in some, most, or all of these crimes, are referred to as points of similarity, and some can serve as both MO and Signature behaviors.

There are thirty-seven points of similarity in these cases from a behavioral perspective, which support this writer's opinion that the murders of Tricia Pacaccio, Ashley Ellerin, and Maria Bruno, and the attempted homicide of Michelle Murphy, were committed by the same offender. These thirty-seven points of similarity are addressed separately in this written assessment and are listed below:

- Victimology
- Victim Risk Level
- Targeted Victims
- Dynamics of Victims' Homes
- Neighborhood Dynamics
- Offender Risk Level
- Single Offender
- Offender Fearlessness/Lack of Anxiety
- Predatory Aggression
- Instrumental Violence
- Offender Emotion
- Style of Attacks
- Victim Control
- Absence of Ligatures
- Mission Oriented Behavior
- Callousness of Crimes
- Depersonalization of the Victims
- Objectification of the Victims
- Time of Attacks
- Window of Opportunity
- Crime Scene Lighting
- Choice of Weapon

- Absence of Anal, Vaginal, and Oral Sexual Assault
- Movement of the Victims' Bodies
- No Evidence of Crime Scene Clean Up
- Victims' Injury Patterns

### **Motivation**

- Lack of Evidence of Financial Motivation
- Thrill Seeking/Excitement as a Motivation
- Paraphilic Behaviors
- Sexual Motivation
- Watching Behavior/Voyeurism as Sexual Motivation
- Blitz Ambush-Style Attack as Sexual Motivation
- Startling/Frightening/Terrorizing the Victims as Sexual Motivation
- Stabbing/Picquerism as Sexual Motivation
- Murder as Sexual Motivation
- Posing Victims' Bodies as Sexual Motivation
- Post Mortem Mutilation as Sexual Motivation

### **CRIME SCENES**

Each crime scene is synopsized below and the discussions regarding the thirty-seven points of similarity are provided later in the assessment.

#### **Tricia Pacaccio Crime Scene**

In the early morning hours of August 14, 1993, eighteen-year-old Tricia Pacaccio parked her car in the driveway in front of the family home located in Glenview, Illinois. There were other family cars parked in the side driveway that morning which necessitated Tricia parking in the front driveway. She walked to the side of the house in order to access the side door, which was routinely used by family members as their point of entry and exit. The family never used the front door to enter or exit their home. Strangers to the Pacaccio family would not be aware of this practice.

The Pacaccio home is located in a residential neighborhood of Glenview. The side of the home, where the attack occurred, is located along a cul-de-sac. There was only one way in and one way out of this cul-de-sac. There was a home immediately adjacent to the Pacaccio home and several directly across the street on the cul-de-sac. The residents and guests at those homes would have been in a position to hear and/or see something that morning had they been looking across at the Pacaccio home.

There was a picture window in the Pacaccio home overlooking the stoop where Tricia was murdered. If a family member were sitting inside that room when Tricia approached the door, they would have seen the attack and murder.

Neighbors living across the street from the Pacaccio's on the main thoroughfare were hosting a party that lasted into the early morning hours on August 14th. There were more than the usual numbers of cars parked along that street because of the party. Some of the partygoers would have been leaving the party and walking to their cars about the same time Tricia came home, and just before the murder occurred. These people could have observed the offender walking around the neighborhood, or seen Tricia parking her car and walking around to the side of her house.

The numbers of cars parked in the Pacaccio's side driveway would have indicated to anyone watching or observing the home that morning that the home was most likely occupied. Someone more familiar with the Pacaccio family and their cars would know specifically who was inside the home that morning. A stranger would not have known specifically who was inside the home, their routines, or schedules, and what, if any, threat the people inside might pose.

If Tricia Pacaccio had seen someone standing near the side door as she approached, and she did not recognize him, it is unlikely she would have continued walking toward that door. Therefore, it is most likely she either did not see someone standing there or, if she saw someone, this person was familiar to her and she did not consider him to be a threat.

The attack on Pacaccio was a blitz-ambush style attack, which most likely immediately overpowered her. Tricia was stabbed multiple times and there was no evidence of sexual assault or an attempt at sexual assault anally, vaginally, or orally. She was left on the stoop outside the side entrance of her home until her father found her hours later.

Tricia's murder was the only one in this series that occurred outside the residence. It was also the only crime scene where people were inside the residence at the time it occurred, including her mother, father, and brothers.

### **Ashley Ellerin's Crime Scene**

Twenty-two year old Ashley Ellerin resided in a single-family home located in Hollywood, California. Ashley was renting the home with her female roommate who was not home on the evening of the murder. The house is located in a densely populated area and within a very short distance of a major thoroughfare with shops, restaurants, and businesses. In the immediate area around the Ellerin home, there are numerous apartment buildings and single-family homes located very close to one another. Because of the height of some of the apartment buildings, it is possible to look down at Ellerin's home from upper level apartments as well as from the roofs of buildings in the area. The road alongside the back of the Ellerin residence was a dead end road. Her house was adjacent to a public dog park where, at the time, the general public could walk their pets 24 hours a day and seven days a week.

At the time of Ellerin's murder, there were bars on most of the windows of the home, but they did not obstruct the view. There were bushes, trees and other foliage in front of her house and along the side that did provide the home with some privacy. The foliage on the sides and back of the house was

denser than it was in the front. The front of Ellerin's home had windows that looked out on a parking area where she and her roommate parked their cars. These windows were not covered with blinds or curtains at the time of her murder. Someone walking by the home would have been able to see inside. The dog park located on the other side of the parking area is slightly elevated and someone standing in the park at the time of her murder could have seen inside the home, as well as people coming and going from the home. Ellerin's car was parked in front of her home on the evening she was murdered and lights were on inside the home.

Ellerin was murdered between 8:15 PM and 9:00 PM on February 21, 2001. At this time of the evening there would have been residents, visitors, and service people moving throughout the neighborhood who could have seen or heard something if they were in the right locations.

Ellerin's roommate had gone out for the evening. Later that night she returned home unexpectedly and attempted to enter the home. However, the door was locked and she did not have her keys, so she left. She returned the following day and found Ellerin's body. Ellerin had a male friend visiting her earlier that evening and they engaged in sexual intercourse. This friend recalled that he left Ellerin's home at approximately 8:15 PM. After he left, Ellerin took a shower and was preparing to go out on a date later that night. She was murdered approximately sometime between 8:15 PM and 9:00 PM.

There were no signs of forced entry or forced exit inside or outside the Ellerin home. The doors and windows were secured and bars covered most of the windows. According to people that knew her, Ellerin locked her doors if she was home alone. There were no signs of a struggle at the front door, or anywhere else in the home. The attack and murder scene are limited to the area in the house where Ellerin's body was found. It is the opinion of this writer that the offender's style of approaching his victims is a "Signature" behavior for him, and the implications for this are discussed later in this assessment. This offender had a preferred attack style in which he attacked his victims in a sudden, strong, and overpowering manner before they become aware of his presence, and it is likely he attacked Ashley Ellerin in this manner. Her injury pattern indicates the offender gained immediate control of her and never lost control. Therefore, it is less likely that this offender knocked on Ellerin's front door, requested admittance into her home, and sometime later initiated the attack. It is more likely he entered Ellerin's home without her knowledge using a key he somehow obtained, or by manipulating one of the locks to the door and used his blitz-ambush style of attack before she realized what was happening.

Ashley Ellerin was stabbed multiple times and there was no sign of sexual assault or attempted sexual assault anally, vaginally, or orally. Her body was posed after she was murdered.

### **Maria Bruno's Crime Scene**

Thirty two year old Maria Bruno lived in a ground floor one-bedroom apartment in a two-story complex located in El Monte, California. Access into the complex from the street was restricted and required a special access card to gain entry. However, once inside there were no restrictions preventing

access to the common areas of the complex and movement by both tenants and visitors was unfettered. Residents in this complex maintained different day and evening schedules, which would have been unknown to an offender not familiar with the complex or its residents.

In the early morning hours of December 1, 2005, when Bruno was murdered, there were residents inside their own apartments. Each apartment opened to the courtyard, and residents and visitors could walk directly up to the front door of anyone's apartment. Each apartment had a front window that overlooked the courtyard as well as the apartments on the opposite side, which is a distance of approximately 100 feet. For the most part, residents could see who was moving around the common areas and who was coming and going even though there were trees, bushes, and other foliage planted throughout the complex, limiting the views, in varying degrees, from some apartments. Bruno's apartment was not obscured by foliage.

Bruno moved into her apartment approximately one week before her murder, after having separated from her husband. She had not yet established a regular routine, and she came and left her apartment at different times of both the day and night. Several days prior to her murder three different men visited her apartment after 11:30 PM. One of these guests reportedly stayed long enough to retrieve his wallet, which he left with her the evening before. Another male friend spent the night into the early morning hours with Bruno the day before she was murdered. The evening before her murder, Maria and her husband Irving had been out drinking. Irving drove Maria back to her apartment early the morning of December 1<sup>st</sup>. He spent approximately 30 to 45 minutes with her at the apartment while they engaged in sexual relations in both her bathroom as well as her bedroom. Irving Bruno left his wife's apartment at approximately 2:30 AM on December 1st. When he left, his wife was nude, covered up and asleep in her bed.

Sometime after 2:30 AM, the offender removed the screen from the kitchen window of Bruno's apartment and entered. This screen was subsequently found later that morning in the grassy area between the front of Bruno's apartment and the apartment adjacent to hers. Bruno was attacked and murdered in her bed. There were no signs of a struggle inside her apartment. She was stabbed multiple times and the offender engaged in post mortem mutilation of her breasts. Bruno's body was also uniquely posed. There were no signs of sexual assault or attempted sexual assault, vaginally, anally, or orally.

### **Michelle Murphy's Attempted Murder Scene**

At the time of her attack, twenty-seven year old Michelle Murphy lived in an apartment located in Santa Monica, California. She shared her two-bedroom apartment with a female roommate who was on vacation at the time of the attack. Michelle was alone in her apartment on the evening and early morning hours preceding the attack. Her apartment was located on the second floor of a large apartment complex, which was flanked closely by apartment buildings on either side and separated by narrow sidewalks, which were used by residents and guests throughout the day and night. Behind Murphy's

apartment was an alleyway the size of a single lane road, which could be accessed at either end. Residents, visitors, and the general public used this alley throughout the day and night. There was a carport directly underneath Murphy's apartment and adjacent to the alley. Residents in her building had assigned parking spaces and could come and go at any time of the day or night. Murphy's vehicle was parked in its designated parking space on the evening of the attack.

On the evening/early morning hours of her attack, Murphy took a shower and then watched TV in her living room area where she sat on her couch in front of a large window. Prior to going to bed, she cracked the large front window to allow airflow throughout the apartment and locked her front door. She was asleep in her bedroom when the attack occurred.

The offender scaled up the side of Murphy's building in order to reach the large living room window she left cracked opened, which is a distance of at least ten feet off the concrete sidewalk below. It is also within very close proximity of the front porch of an adjacent apartment that faced this particular window. The offender cut the screen to the living room window, and entered Murphy's apartment. It took time for this offender to access Murphy's apartment and at any point he would have been visible to people walking below, people using the alley or to residents looking out their windows from adjacent apartments.

The offender attacked Murphy while she was sleeping with a blitz ambush style attack. The offender stabbed Murphy multiple times but they were non-lethal injuries. She fought back and the offender fled her apartment. He did not sexually assault her or attempt to sexually assault her anally, vaginally, or orally.

## CRIME SCENE BEHAVIORS

### Victimology

*The offender in this series of murders/attempted murder was either not known to these victims, or not known to them as being dangerous and potentially lethal. At the time of their murders/attempted murder, these women did not expect to be targeted, attacked, and/or murdered.*

Victimology is the study and assessment of the victim of a violent crime in order to determine her risk for becoming a victim. The victimology provides insights into a victim's vulnerability or "susceptibility" of becoming a victim, based on different demographics and characteristics (Burgess et al, 2010). Victimology includes such variables as the victim's personality, lifestyle, habits, behaviors, background, personal relations, etc.

The victims in these crimes were all females ranging in age from 18 to 32 years of age. The attacks occurred over a 15-year span of time between 1993 and 2008. The first of these attacks occurred in Illinois and the last three occurred in California.

These victims were similar in stature. They were petite, each under 5'4" and weighing less than 130 pounds at the time of their murders/attempted murder. Three of the women were Caucasian and one of the women was Hispanic. Each of these women was described by people who knew her as being physically attractive, and outgoing. All of the women were dating at the time of their murders/attempted

murder. Maria Bruno was married but separated from her husband at the time of her death. Tricia Pacaccio had just graduated high school and was planning to attend college in the fall. Bruno, Ellerin, and Murphy were all employed.

There is no evidence that these four women knew each other, or had friends, colleagues or associates in common. In the Pacaccio, Ellerin and Murphy cases, there were no reports of prior attempts of violence on these women by offenders, known or unknown to them. There were no records of restraining orders filed by these three women or their families documenting a prior act of violence by a known or unknown offender, or documenting their fear about a future act of violence, by a known or unknown offender.

Maria Bruno had reported to at least one friend about domestic violence in her marital relationship. She also reported to at least one friend about an unidentified male who followed her into her new apartment on a prior occasion. However, neither of these incidents was known to law enforcement until after her death. There was no other information available at the time of this assessment that any of these women were concerned for their safety at the time of their deaths. All indications about these victims indicate that they were living their lives in a normal fashion and without restrictions stemming from concerns about a known or unknown, threatening, dangerous individual in their lives. The offender in this series of murders/attempted murder was either not known to these victims, or not known to them as being dangerous and potentially lethal to them. At the time of their murders/attempted murder, these women did not expect to be targeted, attacked, and/or murdered.

### **Victim Risk Level**

*These victims are low risk victims for the type of crime committed against them and where it happened.*

A victim's risk level for becoming the victim of a violent crime can be elevated or decreased depending on where she is at the time she is attacked, what she is doing, and whom she is with.

Three of these women were in their homes when they were attacked. Tricia Pacaccio was in an area immediately outside of her home when she was attacked and murdered. A victim's home is often considered a comfort zone, and a place where she can expect to feel safe, and not a place where she will become the victim of a violent homicide. A victim's risk level, even if she is inside her home, can increase depending on the crime rates in her neighborhood. Each of the neighborhoods where these murders/attempted murder occurred was a middle class to upper middle class residential area where multiple people lived, traveled, and visited. Each of these neighborhoods had a low incidence of violent crimes. More significantly, at the time of the murders/attempted murder there were *no* similar murders/attempted murders in *any* of these neighborhoods manifesting the general features observed in the Pacaccio, Ellerin, Bruno, and Murphy cases:

- *Murders/Attacks involving excessive stabbing*
- *Female victims, between the ages of 18 and 35 who were alone at the time*

- *Victims were inside or immediately outside their residence when attacked*
- *Robbery not the motive*
- *An absence of obvious sexual assault - orally, anally, and/or vaginally*
- *Bodies not moved or transported to another location*
- *Murder weapon taken and removed from the scene*
- *Post Mortem mutilation of Victims*
- *Posing of Victims' bodies*

## Targeted Victims

*These victims were specifically targeted by an offender they either did not know, or knew but did not consider to be lethal.*

Victims of violent crimes are behaviorally classified as targeted victims or victims of opportunity. Victims of opportunity are not preselected by the offender. They become a victim because they inadvertently encounter an offender who is looking for someone to victimize.

Targeted victims are specifically selected by the offender, based on his unique victim selection criteria which can include such variables as physical appearance, sexual attraction, symbolism of the victim to the offender, victim's ability to be controlled, victim's accessibility, availability and desirability (McNamara et al. 2004). In these cases, the offender specifically went to the victims' homes/area immediately outside her home to murder them.

Planning and preparation are required to target and access a specific victim, particularly if the offender is planning to attack and murder the victim inside her home. These murders/attempted murder involved behaviors, which indicated the offender planned and prepared for these crimes and they will be discussed throughout this assessment.

## Dynamics of Victims' Homes

*This offender was aware of and familiar with "real-time" dynamics inside each of the victims' homes/area around their homes, at the time of the attacks.*

Choosing the victim's home as the location where he is going to attack and murder requires that the offender possess *real time* information about the victim as well as the dynamics inside and around her home. This offender spent time in and around these victims' homes before he attacked them. This offender's comfort inside and around these homes came, in part, from his personal knowledge of the layout of the homes and his "real time" knowledge of the homes' dynamics. He was able to spend the necessary time to attack these women, gain control of them and then repeatedly stab them. In Maria Bruno's case, he spent a significant amount of time in the post mortem mutilation of her breasts then additional time posing her body on the bed. Similarly in the Ellerin case, after attacking and stabbing her 47 times, the offender took additional time to position and pose her body in a very specific manner.

A victim's schedule can change on a daily or hourly basis. The dynamics inside her home can change rapidly due to work schedules, emergencies, changes in roommates' schedules, unexpected visitors to the home, etc. These last minute changes would not be known to casual acquaintances or infrequent visitors to the home and certainly not known to a stranger who had "cased" the house the week or month before. If an offender relies on "stale" information he will most likely misjudge his window of opportunity and encounter numerous problems once inside the home, making mistakes that could quickly disable his criminal plan, and result in his being injured, killed, or arrested.

In order to minimize or eliminate as many hazards as possible, this offender needed "real-time" information about the dynamics inside the home before he initiated his attacks. In order to get this real time information, this offender had to be watching these victims and observing what was going on inside and outside their homes immediately prior to initiating his attacks.

It is also likely that this offender had either surreptitiously been inside the homes of these victims on a prior occasion or had accessed their homes legitimately with some type of ruse in order to gain knowledge about the layout of the house.

Entering a victim's home is high-risk behavior for an offender because of the dangers it can pose for him. If he has never been inside the home before, an offender faces numerous hazards and threats, which can jeopardize not only his safety but also his ability to successfully commit the crime. He will be unfamiliar with the physical layout of the home, the location of safe rooms, where valuables, firearms, and other weapons are kept, entrances and exits, dangerous pets, alarms and other hazards.

## Neighborhood Dynamics

*This offender was aware of and familiar with the neighborhood dynamics in each of these cases.*

A neighborhood is full of potential witnesses and heroes who can prevent a crime from happening. Therefore, an offender coming into a neighborhood to target a specific victim must have knowledge of the neighborhood dynamics including where and when people come and go throughout the day and night.

This offender was able to commit four very high-risk attacks resulting in three murders in four separate congested, residential neighborhoods. His pre-planning was critical and it would have necessitated his being in those neighborhoods and around the victims' homes on prior occasions so he could watch and learn about the neighborhood, including who lived there, people's routines, people's vehicles, and who came and went from the neighborhood on both a regular and irregular basis. The level of comfort this offender appeared to have in each of these neighborhoods which allowed him to move around freely and openly before and after the murders/attempted murder suggests that he had experience and familiarity with the neighborhood which can only be acquired by spending time there on multiple prior occasions, and/or living there.

## Offender Risk Level

*The offender risk level in each of these cases is extremely high.*

An offender's risk level is the degree of risk the offender assumes in order to commit his crimes. The risks include being seen or heard before, during, or after the crime, being identified, apprehended, injured, or killed, and leaving behind incriminating evidence. This offender incurred significant risks based on his choice of targeted victims; attacking and murdering them immediately outside or inside their own homes; spending time watching them prior to committing his crimes; accessing the victims in ways that could have been seen by others; and moving in and out of congested residential neighborhoods at times when people were coming and going.

This offender's watching behavior before the murders required that he be in the victims' neighborhoods and around their homes and apartments immediately prior to the attacks. If his behavior was seen as suspicious, unusual or odd, he would have been at risk for being noticed, stopped, questioned, arrested, and even injured or killed by any number of people during these "surveillances".

These were not isolated, rural areas with limited number of residents and visitors. These were all busy residential areas. Ashley Ellerin, Maria Bruno, and Michelle Murphy all lived in densely populated areas with single-family homes, apartment buildings, and businesses. There were people moving around in these neighborhoods at varying and unpredictable times. There were people close by in their homes when these attacks occurred. This offender could not have controlled for all of these potential witnesses, in spite of his planning and preparation.

This offender accessed these victims in ways that would have been visible to anyone passing by or watching from nearby homes, apartments, or vehicles, which also elevated his risk level. In the Pacaccio case, the offender attacked Tricia outside her home near a lit pole lamp that illuminated the stoop where he ultimately murdered her, and her family was inside the home at the time. In the Ellerin case, there were no covers on the windows and lights were on inside her home. Passerbys could have seen inside her home during the murder if they were standing outside or in the dog park adjacent to her home. In the Maria Bruno case, the offender removed the screen from her kitchen window and climbed into her apartment. Although he entered her apartment in the early morning hours, Bruno's apartment faced other occupied apartments in the complex, some of which had a direct view of her kitchen window. The offender could not know who might be looking out his or her window observing him remove the screen and enter Bruno's apartment.

In the Michelle Murphy case, the offender scaled two sides of the outdoor wall of her apartment to access the living room window where he cut the screen and entered her apartment. He did all of this in an area where he could have been easily observed or heard by people in other apartments, or by anyone walking or driving nearby.

These victims were stabbed multiple times and there was significant bleeding as a result of their injuries. This offender would have gotten the victims' blood on him. There was an absence of evidence at

the scenes indicating the offender attempted to clean up before exiting the victims' homes. Therefore, he left these scenes with blood on his clothes. Even if he wore dark clothing, which could obscure some of the stains, the presence of blood on his clothing, would likely cause him to become immediately suspicious if stopped by a police officer or observed by a passerby.

All of these behaviors significantly raised this offender's risk level for being noticed, stopped, questioned, detained, or arrested and, in the process, even injured or killed.

### **Single Offender**

*A single offender committed these crimes.*

There is an absence of evidence, behavioral or forensic, to indicate there were multiple offenders responsible for these crimes. In addition, these types of sexually motivated homicides, which include distinct, sexually deviant behaviors, are typically committed by single offenders. Michelle Murphy, who survived her attack, reported only one offender.

### **Offender Fearlessness/Lack of Anxiety**

*This offender displayed low levels of fear and anxiety during these high-risk crimes.*

In each of these crime scenes, this offender assumes great risks to himself by engaging in high-risk behaviors that are unnecessary to the successful completion of the crime. The extent of his high-risk behaviors is specifically described throughout this assessment and the motive for this behavior is discussed in a later section of the report under *Motivation: Thrill and Excitement*.

This offender's high-risk behaviors do not appear to be the result of drugs and/or alcohol influence. There is an absence of evidence in these scenes to suggest the offender was performing while incapacitated, disabled or simply "out of it". Drugs or alcohol would impair his cognitive skills and diminish his ability to think strategically. Likewise, drugs and alcohol would likely impair his physical abilities and limit, if not prevent him, from successfully engaging in the following: predatory, stealthful behaviors in congested neighborhoods where there are any number of possible witnesses; successfully controlling, stabbing and murdering three women; carefully mutilating the breasts of one victim and posing two of the victims; removing window screens; scaling walls; being evidence conscience during crimes where the likelihood of leaving behind even minuscule amounts of physical evidence is quite high. If this offender were disabled by drugs and/or alcohol while committing these crimes he would have made more mistakes over the course of fifteen years.

This is an offender who does well in what would be considered extremely stressful and fearful situations for most people. He maintains a high level of performance during his crimes because, other than Michelle Murphy, he is successful in his attacks and murders. Over a fifteen year period during which he could learn ways to lower potential risks to himself, this offender appears to purposefully include high-risk behaviors in his crimes suggesting he enjoys the risks and is either not debilitated by the

fear or anxiety associated with very stressful situations, or there is a complete, or near complete absence of fear and anxiety for him in these situations.

## Predatory Aggression

*The offender in these cases engaged in predatory aggression.*

Predatory aggression is aggression that is purposeful, planned, goal directed, and involves instrumental violence (Meloy, 2012). In predatory aggression, the offender is the hunter and the victim is his prey. A predatory offender is able to focus on the victim, stealthfully watch her, study her behavior, and determine the best time to attack. In these cases, the offender spent time watching and observing these victims beforehand in order to learn about their routines and habits. His watching and observing allowed him to choose the best time to attack his victims. His predatory behavior could have served a dual purpose. It is behavior that provided him with "intelligence" about the victims and, it was also sexually arousing for him. The sexual aspect of this predatory behavior will be discussed later in this assessment.

## Instrumental Violence

*The type of violence seen in the murders of Tricia Pacaccio, Ashley Ellerin, and Maria Bruno is instrumental violence. Instrumental violence is coldblooded, purposeful and goal directed, and frequently involves strangers (Meloy, 2012).*

Instrumental violence, the unique violence manifested in the murders of Tricia Pacaccio, Ashley Ellerin, and Maria Bruno, and in the attempted murder of Michelle Murphy is a specific type of violence that is cold-blooded, purposeful, and goal directed. The emotional state of an offender engaged in instrumental violence is controlled. Instrumental violence is contrasted with reactive or affective violence, which is impulsive and emotional (Meloy, 2012). In cases involving reactive violence the offender is responding to a real or perceived threat and that type of violence is more impulsive and without planning (Cornell et al. 1996).

There is no indication that these victims engaged in behavior prior to their murders that could have been interpreted as provocative or threatening to the offender. This offender overpowered the victims suddenly and without warning and gained control of them immediately. There was no time for conversations, which escalated into violence. This offender's violence was purposeful and goal directed, which is evidenced by the injury patterns to Tricia Pacaccio, Ashley Ellerin, and Maria Bruno. The offender stabbed these women multiple times, using significant force resulting in major internal damage and death. His stabbings were purposeful and his goal was to kill them. In the Ellerin and Bruno murders his purpose also included post mortem posing of their bodies; and in the Bruno murder, it included post-mortem mutilation.

Instrumental violence often involves strangers as victims and in these cases the offender was either not known to these victims, or not known to them as being dangerous and potentially lethal.

## Offender Emotion

### *This Offender was emotionally controlled.*

Emotions can "prime behaviors and serve as motivators for human behavior (Matsumoto et al.). Negative emotions like anger, fear, contempt, disgust, and hatred have different physiologies, mental states, different behaviors associated with them, and different pathways of development. (Matsumoto et al.). The offender's emotion in these cases did not result in impulsive, reactive, or frenzied behaviors, which would be more consistent with reactive violence and indicative of anger, rage, or fear.

Disgust is described as a primary and a universal emotion, which results in the offender viewing the victim as "contaminated." An offender motivated in part by disgust is more focused on "who the victim is" or what she represents to him vs. what the victim actually did to him. Hatred is a secondary emotion and it takes time to evolve. Hatred is an emotion that has "aged". It develops and evolves over time resulting in a less reactive physiological response. It evolves out of anger or disgust. However hatred that evolves primarily out of disgust results in the offender viewing a victim as "inherently bad or contaminated, with no chance for rehabilitation and the only logical recourse is to "eliminate" them. This need for elimination can include "extreme violence". This type of hatred is less reactionary, much less impulsive, and more controlled (Matsumoto et al.).

The offender's emotion in these cases is more consistent with hatred for these victims – women he either did not know or knew superficially. His stabbing behavior indicated he intended to kill them, not just injure them, or sexually assault them, but to eliminate them.

The injury patterns on Pacaccio, Ellerin, and Bruno are not indicative of an offender experiencing uncontrollable rage or anger. Their stabbing injuries lacked features of an offender who was in frenzy. Uncontrollable anger, or rage can be seen in cases of escalating violence following a verbal argument between an offender and the victim. It can be seen in injury patterns that include blunt force trauma caused by the use of multiple weapons, or evidence of biting, hitting, kicking, or punching causing black eyes, swelling, and extensive bruising.

An offender can become angry and enraged if he loses control of a victim. Slashing and tearing stab wounds can indicate the offender had to chase after a victim to subdue her and regain control. However, these types of injury patterns were not observed on Pacaccio, Ellerin, or Bruno.

There is no indication that any of these women were involved in an argument with the offender prior to their being attacked. His initial attacks on them were "behaviorally explosive" (Meloy, 2012) and immediate, which would have precluded any verbal interaction between them. This offender was focused and mission oriented to kill these women when he entered their homes (Meloy, 2012; O'Toole, 2014).

The injury patterns to these victims included mostly deep, stabbing injuries. (\*Tricia suffered a broken left arm and Maria suffered bruising to her legs.) Their distinct injury patterns suggest an offender who was controlled, focused, and purposeful. He controlled his stabbings and made sure they were deep,

multidirectional, extremely damaging, and lethal. He was focused on inflicting maximum damage that would cause death.

Michelle Murphy's injuries are different. Her non-lethal injuries included more slashing and tearing-type wounds more consistent with her fighting the offender and him attempting to regain control of her.

### **Style of Attacks AND Victim Control**

*These attacks were blitz-ambush attacks that were "behaviorally explosive" and designed to immediately overpower and disable the victims (Meloy, 2012).*

These were blitz-ambush style attacks. The offender overpowered the victims quickly and with force. He gained immediate control and maintained control throughout the attack, except with Michelle Murphy who fought back causing the offender to flee. This style of attack seems excessive considering the offender was already armed with a sturdy, sharp knife, which he could have used to control these victims. However, he chose a style of attack that allowed him to stealthfully and without warning get close enough to Pacaccio and Ellerin, who were likely standing or in more of an upright position at the time, and then pounce on them. He likely approached them from behind, catching them completely off-guard and immediately overpowered them. In a similarly stealthful manner and without warning, he sneaked into the apartments of Bruno and Murphy and pounced on top of them while they were asleep in bed. This offender could not have known with certainty the condition of either Bruno or Murphy and their level of consciousness, so it would have been important for him to be as quiet as possible before initiating his signature attack.

Gaining immediate and complete control of Pacaccio, Ellerin, and Bruno enabled this offender to be physically close to them, so he could use the force of his own body to thrust the knife into them as deep and hard as he could, intending to inflict very damaging and lethal injuries.

Pacaccio, Ellerin, and Murphy were likely completely caught off guard by this immediate, surprise and overpowering attack, and were likely terrified not knowing what was happening. Due to the alcohol in her system, Bruno may not have been completely aware of what was happening. The victims' fear could have been seen on their faces, in the sounds they made and in recoiling or defensive movements of their bodies, all of which could have been sexually exciting for the offender, which will be discussed later in this assessment.

### **Absence of Ligatures**

*This offender was able to physically control Tricia Pacaccio, Maria Bruno, and Ashley Ellerin without the use of ligatures.*

There was an absence of ligature marks on any of the four victims. In crimes of violence an offender can use some type of ligature to control a victim, for example, ropes, duct tape, or handcuffs. Controlling these victims was very important because otherwise the offender would not have been able to

inflict such powerful, penetrating, and damaging injuries to them. The lack of ligatures suggests that the offender was confident he could control his victims using his signature style of attack and he did not need ligatures.

## Mission Oriented Behavior

*This offender was mission oriented in his attacks; his motivation to target and murder these specific victims was very high.*

Mission-oriented offenders are not impulsive offenders. Their actions are predatory, goal directed, and without emotion. Their crimes are well-planned. Making preparations, and fantasizing about the crime can span days, weeks, or longer. Mission-oriented offenders are prepared to carry out their crimes in spite of the potential risks or hazards they might face (O'Toole, 2014).

This offender planned these homicides/attacks with precision. He spent time watching the victims, was familiar with their schedules as well as the dynamics inside their homes and around their neighborhoods. He had "real time" information about both because his window of opportunity in each case was very small. He came prepared to attack and kill his victims and escape in a stealthful manner. He was committed to completing these murders, spending whatever time necessary with the victims to accomplish his goals, and was willing to disregard personal risks and overcome necessary hazards to do so.

The Pacaccio scene was an outdoor crime scene and it presented unique risks and hazards for this offender. There was a party at one of the neighbor's homes across from the Pacaccio's the evening before/early morning hours of the murder, and there were more than the usual number of people in the neighborhood. In addition, there were vantage spots from both inside the Pacaccio home and outside the home where family and neighbors could have seen what was happening. There were three males and an adult female inside the Pacaccio home at the time of the murder, and this offender would not have known whether they were asleep or awake. The possibility of being seen, heard, and/or caught during the murder did not deter this offender. His behavior indicates he was motivated and mission oriented to complete his attack in spite of these risks and hazards.

Ellerin was engaged in sexual relations with an able-bodied male partner just prior to her murder. Once Ellerin's male friend left her home, there would be no way to know if this friend might unexpectedly return to her home for any reason. Ellerin had a full-time roommate who was out that evening. However her roommate could have returned home unexpectedly with several friends and walked in on the murder. Ellerin's date for the evening could have arrived early, instead of at 10:45 PM when he arrived to pick her up. An unexpected visitor could have stopped by that evening, or an unanswered phone call to Ellerin's residence could have precipitated a friend doing a welfare check on her. Her home was situated in a central location in that neighborhood where people were moving around and any number of them could have seen inside her home while the attack and murder were occurring. However, none of these

possibilities deterred the offender. He came prepared to commit the murder and spend the necessary time inside Ellerin's home where he stabbed her 47 times then carefully posed her body. Despite risks to himself, he was intent on accomplishing his mission.

In the Bruno homicide, Irving Bruno left his wife's apartment at approximately 2:30 AM on the morning she was murdered. However, despite "real time" information this offender had about the victim and the dynamics inside her apartment, he would have no idea if Mr. Bruno might unexpectedly return to the apartment for some reason. He could not know if the resident in the adjacent apartment got up in the early morning hours to get water, or use the bathroom, and could hear something that would prompt a call to the police. In fact the resident in the apartment adjacent to Bruno's would later report having heard an unfamiliar noise, coming from her apartment in the early morning hours but he did not call the police.

The offender removed the screen from Bruno's kitchen window and entered her apartment. This could have been viewed or heard by someone in a nearby apartment prompting a call to the police. Despite these real possibilities this offender's behavior indicates he was willing to take the risks and was motivated to commit this murder and spend the necessary time inside Bruno's apartment to not only murder her, but to engage in post mortem mutilation of her breasts and then carefully pose her body.

These unnecessary behaviors cost the offender time inside the victims' homes and exposed him to greater risks for being caught. These are "Signature" behaviors for this offender and serve as part of the motivation for his crimes.

In the attempted murder of Michelle Murphy, this offender came prepared to climb up the back and the side of Murphy's apartment, scale around to the area where the living room window was located, and hang at least ten feet above the concrete sidewalk below while cutting the screen to the window so he could enter her apartment. This is determined, committed, motivated behavior. This offender was mission oriented to attack and murder Murphy that night in spite of the risks to himself and the hazards he had to overcome.

### **Callousness of the Crimes**

*These murders/attempted murder manifested a high degree of callousness on the part of the offender.*

Callousness indicates a stunning lack of concern, regard, and empathy for others (Hare, 1993). This offender demonstrated a callous disregard for each of these victims and particularly for the three women he murdered. He purposefully entered their homes or the area around their home to attack and murder them. He purposefully and repeatedly stabbed Tricia Pacaccio, Ashley Ellerin, and Maria Bruno with the necessary force to cause severe damage and multiple lethal injuries. The repeated, forceful, deliberate stabbing would have been extremely painful and terrifying for these victims. This offender's attitude towards the victims, and what he did to them shows a stunning absence of empathy and compassion for their suffering and pain.

The manner in which this offender left these victims after he finished with them is also indicative of his callousness and lack of concern and empathy for them. After stabbing her multiple times, the offender left Pacaccio lying on a cement stoop, outside, like an old newspaper, exposed to weather, animals, etc., until hours later when her father found her. He left Ellerin lying on the floor of her home, after stabbing her 47 times and then manipulated and posed her dead body, as though she were an object rather than a human being. He left Maria lying in her bed nude and exposed, with her breasts removed and one of her nipples placed in her mouth and her body posed in a grotesque and provocative position until she was found unexpectedly by her husband later that morning. This behavior was very degrading to Bruno, almost mocking her in death.

This offender's stunningly callous, but intentional, deliberate touching and handling, of Bruno and Ellerin after they were dead, suggests he was not upset, revolted or repulsed by his interaction with human bodies covered with blood, but rather that he enjoyed what he was doing and was having fun playing with these women he had just murdered. If the offender were shocked by what he did to them or disgusted and overwhelmed by his behavior, his reaction would likely include covering their bodies, quickly leaving the victims' home/apartment, anonymously calling 911 or experiencing physical reactions including vomiting or fainting. There is no evidence of any of these behaviors at these two scenes, in fact he continued to interact with Ellerin's and Bruno's bodies after murdering them. His behavior suggests he was playing with their bodies. He manipulated them, moving their heads, arms, legs, and fingers in order to position them in a very particular way. He treated their bodies, not like human beings, but rather like objects, dolls or figurines with movable body parts that can be pushed, moved, and posed however he wanted.

### **Depersonalization AND Objectification of Victims**

*This offender depersonalized Tricia Pacaccio, Ashley Ellerin, and Maria Bruno.*

Based on his treatment of these victims including the physical and emotional damage he caused them, the brutal manner in which he murdered them, and the manner in which he left their bodies, this offender depersonalized these victims and treated them like his toys or personal possessions. (See Above)

Depersonalization of a victim means the offender views and treats a victim as if she were an object and not a human being (Douglas, et al. 2006; Van Brunt et al. 2014). Depersonalization is to take away someone's humanity. In these cases, the offender murdered three of these women very violently. He desecrated Bruno's body by removing her breasts, nipples, and skin around the area and degraded and demeaned her by using these body parts like props when he posed her. He posed both Ellerin and Bruno's bodies in provocative positions in order to showcase their injuries as well as his own "handiwork". The manner in which this offender attacked and murdered these victims, and the way he used, manipulated, and degraded them indicates he did not view them as human beings but rather as his

possessions or his objects. Depersonalization is more consistent with an offender who hates his victims, is disgusted by what they represent to him, and his goals are to demean, denigrate and destroy them. However, as indicated above, his treatment and handling of the victims as objects suggests an offender who was enjoying what he was doing to the victims and how he was making them look. His enjoyment was two-pronged. It was likely for his own satisfaction, and to use these women's bodies as objects of horror when they were found by loved ones.

### Time of the Attacks

*All of the victims were murdered/attacked at times when other people were around, either in their homes, or present in the area.*

Pacaccio, Bruno, and Murphy were attacked in the early morning hours and Ashley Ellerin was attacked during evening hours. Because of the type of neighborhoods where these crimes occurred, the time of these attacks becomes particularly important. Each of these neighborhoods was congested with both residents and visitors.

Most people would be in their homes during the early morning hours and are less likely to be aware of someone walking around their neighborhood. However, because of the congested nature of these neighborhoods and the close proximity of the homes and apartment buildings to one another, there would have been many people close by when these women were attacked and murdered and all of them could have been potential witnesses. Moving around these neighborhoods with apparent comfort and ease during early morning hours is indicative of someone who has experience being out at those times, moving around neighborhoods, watching and observing what is going on, and being able to respond with a seemingly legitimate reason for being there if asked.

At the time of Ellerin's murder, between 8:15 PM and 9:00 PM, more people would be awake, moving around her neighborhood, conducting normal business, etc., which would have increased the offender's risk for being observed. His decision to attack and murder Ellerin at a time inconsistent with the other three may have been based on several factors, including but not limited to the following:

- Ellerin was unavailable and/or not accessible during early morning hours.
- The offender was around her home that evening watching and observing.
- The offender watched or heard Ellerin engaging in sexual relations with her friend, became sexually aroused and decided to attack that evening.

All of these factors could have contributed to the offender's decision to attack and murder Ellerin on that evening and at a time inconsistent with the other attacks. However, his preexisting familiarity with Ellerin, her home and the neighborhood would mitigate this offender's risks, and reduces the likelihood of his behavior being impulsive, but rather consistent with predatory behavior: thoughtful, premeditated, and well planned.

## Window of Opportunity

*In each of these cases, there were very small windows of opportunity for the offender to successfully carry out his attacks and murders.*

The window of opportunity is the period of time when the offender is able to successfully commit the crime. In each of these cases the window of opportunity for this offender was small. The window of opportunity in the Ellerin and the Bruno murders was particularly small.

Tricia Pacaccio was about to enter her home when she was attacked and murdered. Her parents were inside the home at the time but their activities would have been unknown to the offender. Tricia's older brother had a friend visiting that evening and they were watching a movie in the basement until after midnight. The older brother went to bed at approximately 12:30 AM and Pacaccio's younger brother went to bed between midnight and 12:15 AM. Tricia arrived home sometime after 1:15 AM. However, anyone in her family could have been up moving around, watching TV, reading, using the bathroom or looking out the window watching for Tricia to return home. If Tricia had been able to enter her residence, any sounds associated with her attack and murder would very likely have alerted her father, brothers, and mother – four able bodied people who would have immediately interceded and contained the offender. The offender could not afford to let Pacaccio enter her home. He had to attack and kill her before she got inside, otherwise he would have been vulnerable to attacks from her family members inside.

Ashley Ellerin was engaged in consensual sexual activity with an able-bodied male friend inside her home shortly before she was attacked and murdered. If the offender did not have knowledge of what was transpiring inside the Ellerin residence immediately before he entered, he would have likely confronted her male friend whose response would have been to immediately call the police and have the offender arrested and/or fight with the offender, injuring or even killing him.

Maria Bruno was engaged in consensual sexual activity with her husband inside her apartment shortly before she was attacked and murdered. If the offender did not have knowledge of what was transpiring inside Bruno's apartment immediately before he entered, he would have encountered Irving Bruno whose response would have most likely been to stop the offender and call the police.

Murphy had just showered and watched TV in her living room. She cracked the living room window and locked her front door before going to bed in her bedroom. If the offender entered Murphy's home while she had been sitting on her couch watching TV in her living room, she would have heard him scaling the outside wall of her apartment and certainly seen him cutting her screen. She would have likely screamed, called 911, yelled for help, etc. and the offender would have been apprehended, injured, or even killed.

## Crime Scene Lighting

***There were lights on in the residences of Ashley Ellerin and Maria Bruno and an illuminated outdoor pole light adjacent to the stoop where Tricia Pacaccio was murdered.***

In the Pacaccio, Ellerin, and Bruno scenes, lights were on in or near the area where the attacks and murders occurred. Prior to Tricia returning home, her older brother switched on the outside pole light adjacent to the stoop where Tricia was murdered. This light would have illuminated that immediate area making the attack even more visible to anyone looking out his or her window, driving by or walking down the sidewalk. There was no evidence the offender attempted to disable this light.

Lights were on inside Ellerin's home immediately prior to the attack and when her date arrived at approximately 10:45 PM he was able to see inside the home where he noted what he thought was a red wine type stain on the floor. This suggests that the lights were likely on during the murder, making it even easier for anyone passing by to see inside. If the lights were already on when the offender entered her home, he could have shut them off. The fact that he did not suggests he was not deterred by having lights on, and in fact needed the lighting to carry out his crime.

In the Bruno homicide, first responding officers from the El Monte Police Department indicated both the kitchen and bedroom lights were on when they arrived and Detectives confirmed when they walked through the Bruno apartment the bedroom light was on.

Leaving lights on during a murder, although high risk for the offender, allowed him to see what he was doing to the victims. It also allowed him to observe the victims' responses to his infliction of physical and emotional pain. In the Bruno case, lighting was particularly important because of the post mortem mutilation. The offender needed the lighting so he could carefully and exactly remove Bruno's breasts, nipples, the left areola, both breast implants, and adjacent skin and to subsequently pose her. He originally placed one of her areolas on her mouth with the nipple pointing upward. When Irving Bruno, the first responder, saw his wife this way, he recalled pushing the nipple off his wife's mouth. His posing of Bruno was purposeful and not haphazard.

In the Ellerin and Bruno murders, the offender needed to see the victims' bodies in order to make sure he was getting the results he wanted. Having lights on at these scenes in particular, he could remember exactly how these victims looked when he was finished with them, and if he took a photograph of Ellerin and Bruno before he left, the lighting would have improved the quality of the photos.

## **Choice of Weapon**

***A knife was the offender's weapon of choice.***

The offender's choice of a knife as a weapon in these cases is important. Although a knife can be a lethal weapon it is not necessarily an efficient one. A knife requires getting up close to the victims, and grasping the victims while stabbing them. Victims will attempt to move away from the person stabbing them and during a struggle the offender can drop his knife and/or have it used against him. It can take longer to kill someone with a knife. Death is not instantaneous. Therefore, an offender motivated to kill a

victim must spend more time in the act of killing, which exposes him to additional risks. However, based on this offender's ability to control the victims and wield a knife at the same time, he appears comfortable using a knife, which is likely based on prior experience, including using knives in "combative" situations.

It is likely this offender wanted to cause pain for these victims as opposed to just killing them quickly. He chose a knife or knives to accomplish his goal – to inflict maximum damage and to kill the victims as painfully as he could. His choice of a knife was one that was strong and durable with a blade that was sharp and long enough to inflict forceful, stabbing injuries that would be deep, penetrating and significant enough to damage multiple internal organs and cause death in three cases. The knife or knives was or were also capable of performing post mortem mutilation of Maria Bruno's breasts.

In the Pacaccio, Ellerin, and Murphy cases the offender brought the knife or knives with him and took it/them with him when he left. In the Bruno case, a knife, hereafter referred to as the *Bruno knife*, went missing from a new set of knives the victim purchased and kept in a kitchen drawer. While it cannot be ruled out that the offender used the *Bruno knife* to attack, kill, and mutilate Bruno, it is most likely he came prepared by bringing his own knife or knives to that scene, one/ones he was comfortable with and could rely on to inflict the injuries he intended. No murder weapon was recovered from the Bruno scene indicating the offender took the murder weapon with him when he left. The *Bruno knife* cannot be accounted for and therefore, it is likely the offender also took this knife with him when he left.

### **Absence of Anal, Vaginal, and Oral Sexual Assault**

*There was an absence of anal, vaginal, and oral sexual assault in the three murders as well as in the attempted murder.*

Despite the fact that the murders of Tricia Pacaccio, Ashley Ellerin, and Maria Bruno and the attempted murder of Michelle Murphy are, in part, sexually motivated, there is an absence of anal, vaginal, and oral sexual assault, or any attempt at this type of sexual assault in any of these cases. The absence of these behaviors is very unique considering these are sexually motivated crimes.

In the three homicide cases, this offender controlled the victims by immediately overpowering them. Once he controlled them, he could have sexually assaulted them, if he wanted to. But he did not sexually assault or attempt to sexually assault them. In the Bruno homicide, the offender took the necessary time to remove Bruno's left breast, areola, nipple and adjacent skin as well as the underlying breast implant along with her right breast and right nipple and adjacent skin along with the breast implant. In both the Bruno and Ellerin cases, the offender took the time to carefully and strategically pose both victims. Time was not the issue that prevented this offender from sexually assaulting Ellerin or Bruno. He never intended to sexually assault them. His interest was in attacking them with his blitz style attack, stab them repeatedly, engage in post mortem mutilation of Bruno and posing the bodies of Ellerin

and Bruno. These were the behaviors he preferred to engage in with these victims because they were psychologically satisfying and/or sexually arousing for him.

In the Pacaccio homicide, the offender had time to wait for Pacaccio to return home and then blitz ambush attack her, and inflict multiple stabbing injuries to her including one lethal injury to her breast area. However, there was no indication he attempted to sexually assault her, vaginally, anally, or orally. Again, time does not seem to be the issue. There is no indication the offender was interrupted at the scene and had to leave prematurely before finishing the attack. Sexual assault did not appear to be a motive for him. While it is possible that the offender also posed Pacaccio's body after he killed her, her father moved her when he found her and cradled her so it is not possible to make that conclusion.

There was no indication the offender attempted to sexually assault Michelle Murphy. However his attack was cut short when she woke up and fought with her offender who subsequently fled her apartment.

### **Movement of Victims' Bodies**

*These homicide victims were not moved, concealed or covered, but were left exposed where they died/were posed.*

The bodies of Tricia Pacaccio, Ashley Ellerin, and Maria Bruno were left where they died. There was no evidence to suggest this offender attempted to hide these victims, relocate them to another part of the home or yard, or to cover them. There were no drag marks on the floors, and no towels, blankets or other items near the victims to suggest there was an effort to cover them. Hiding or concealing a victim's body is done to delay the discovery and identification of the body, to prevent forensic evidence from being obtained, to put time and distance between the offender and the investigation, and to prevent someone from finding the victim in a shocking position. By leaving the victims' bodies openly displayed inside their own homes/outside the entryway to the home, these victims were going to be found quickly. This offender wanted these women found exactly as he left them, particularly Maria Bruno, and Ashley Ellerin. He wanted them found in the demeaning condition he left them in, in order to demean, degrade and/or mock them, and to shock whoever found their bodies.

### **No Evidence of Crime Scene Clean Up**

*There was no evidence this offender attempted to clean up the crime scenes after the murders of Tricia Pacaccio, Ashley Ellerin, and Maria Bruno.*

There is no evidence that the offender cleaned up or attempted to clean up following these murders. Because of the amount of blood at these scenes, particularly at the Ellerin and Bruno crime scenes, the offender would have gotten the victims' blood on himself. In the absence of any clean up evidence, this offender would have left those scenes wearing bloody clothing, which would have elevated his risk of being stopped, questioned, or arrested if someone saw him, or he was confronted by a police officer.

If this offender was not concerned about being seen with blood on his clothing, this could indicate he had a plan to quickly return to a location where he wouldn't be seen. Being seemingly unconcerned about blood on his clothes could also be indicative of an offender who is arrogant and believes he is too skilled and clever to be caught.

### **Victims' Injury Patterns**

*The injury patterns to the victims are similar in terms of type, damage, placement, direction, and numbers.*

#### **Tricia Pacaccio - Injuries**

Tricia Pacaccio suffered 12 stabbing injuries. Three of these injuries were considered fatal, and a fourth was possibly fatal. One of the fatal injuries to the victim included a penetrating injury to the left ventricle of her heart and the entry wound was near the nipple of her left breast. The consulting Medical Examiner was able to determine that the direction of the knife for five of the twelve total wounds or 41% was multidirectional including left to right, front to back and upward, resulting in significant injuries to the victim's heart; lung, aorta and shoulder area. Pacaccio also incurred two stabbing injuries to her back and a fracture to her upper left arm. There were no injuries to her neck. The depth of the injuries was not provided during the initial Medical Examination.

#### **Ashley Ellerin - Injuries**

Ashley Ellerin incurred a total of 47 stabbing injuries and 12 of them, or 26% were determined to be fatal. The Medical Examiner described the direction of the knife as multidirectional. The offender forced the blade downward, upward, forward, and left to right inside Ashley's body, which would have maximized the damage to her. The fatal injuries ranged in depth from  $\frac{1}{2}$  inch to  $6 \frac{1}{2}$  inches with an average depth of  $3 \frac{1}{2}$  inches and a mode depth of six inches. Fifty-one percent (51%) of the stabbing injuries (fatal and nonfatal) were to Ashley's back, neck and the side of her head. Her stabbing injuries impacted multiple organs and body systems and caused significant damage. Ashley also incurred 13 defensive injuries involving her hands and right forearm in addition to two stabbing injuries to her left knee.

#### **Maria Bruno – Injuries**

Maria Bruno incurred a total of 17 stab wounds, four of which were fatal, and three possibly fatal. Only one of her injuries was described as a defensive injury. However, Bruno's toxicology report indicates that at the time of her death, her alcohol level was elevated and therefore she may not have been capable of fighting back.

The large incised/slash fatal wound of her neck produced extensive damage. The size of this wound was approximately 4 inches vertically and 5 inches horizontally. This fatal injury perforated,

transected, and retracted veins and arteries. It also severed the musculature and portions of the cervical vertebrae and left a large defect in the victim's cervical spine. It was a multidirectional path with a depth of approximately 2.5 inches.

The remaining fatal injuries were in the victim's chest area/right intercostal margin. These stab wounds caused damage to multiple organs as well as the skeletal system. The direction of these wounds was described as multidirectional. The mean depth of these three fatal injuries was 5.3 inches.

The wounds described as "possibly fatal" were all to the victim's neck. Two of these stab wounds were multidirectional and the average depth of these injuries was approximately 1.8 inches.

The postmortem mutilation included the excision of the victim's left breast, areola, nipple, and adjacent skin as well as the underlying breast implant, and the excision of Bruno's right breast, right nipple and adjacent skin along with the breast implant. These body parts were subsequently accounted for. The offender placed them on the victim's body. This behavior is described as "posing" the victim and will be discussed in a subsequent section of this assessment. Bruno also suffered bruising of her lower legs.

### **Michelle Murphy - Injuries**

Murphy's injury patterns are different from the other three victims. Her non-lethal injuries could be classified as defensive injuries, which she received while fighting off the offender. During her struggle with him, Michelle suffered numerous sharp, cutting injuries to her arms, hands, and fingers. However, she did receive one stabbing injury to her sternum area, which would not be considered a defensive injury.

The injury patterns to Tricia Pacaccio, Ashley Ellerin, and Maria Bruno are similar in terms of the following:

- *Multiple stab wounds – Excessive stabbing, which was over and beyond what would be necessary to control the victims and/or to kill them.*
- *Multiple fatal stab wounds on each victim.*
- *Multidirectional path of the knife (front to back, upward, downward, left to right).*
- *Deep penetration of the knife.*
- *Damage to multiple organs and/or skeletal system as well as other systems of their bodies.*
- *Multiple stab wounds to the backs of both Pacaccio and Ellerin, who were likely standing at the time their attacks began. Bruno and Murphy were both in bed at the time their attacks began, and they suffered no injuries to their backs.*
- *Ellerin and Murphy suffered the most defensive injuries. Bruno had one defensive injury, and none of the injuries to Pacaccio were specifically identified as defensive in nature.*

According to the Medical Examiners' reports on Pacaccio and Ellerin and the investigative reports and preliminary hearing transcripts in the Murphy attempted murder case, the injury pattern to these

victims indicates the offender was able to quickly gain control of Pacaccio and Ellerin, although Ellerin's defensive injuries did suggest she attempted to fight back. Bruno had one defensive injury suggesting she was not able to fight back against her attacker in the same way as the others. Michelle Murphy incurred numerous defensive injuries as a result of fighting off her attacker.

There is an absence of behavior in the three homicide cases that would indicate the victims were able to break away from the offender once the attack began. There is an absence of injuries to these victims, which would suggest the offender had to chase after them in order to capture and subdue them. Similarly there were no corresponding blood spatter patterns in other areas of the victims' homes, or in the case of Tricia in the area near the side door to the residence, which would be indicative of multiple struggles. These attacks were isolated to the specific areas where the victims were confronted, attacked, and murdered.

The depth of the stab wounds and the corresponding internal damage they caused due to the force and multidirectional pattern of the knife suggests that the offender was very close to the victims when he was stabbing them and he was able to use his maximum body strength to thrust his knife deeply into their bodies, and stab them repeatedly while maintaining control of them. If the offender had to run after a victim to catch her and regain control of her while simultaneously stabbing her, the injury pattern would appear different. Some of the injuries would not be as deep and damaging, and there would likely be more superficial-type stabbing/slashing type injuries or evidence of poking-type injuries on the victims.

Three of the four victims suffered a stabbing injury, cut to her breast, including Pacaccio, Ellerin, and Bruno. Murphy suffered a stabbing injury to her sternum. Ellerin had a unique, described as "superficial" and "sharp" cut under her right breast. In view of the subsequent post mortem mutilation of Maria Bruno's breasts almost four and a half years later, it is possible that the offender was considering or actually initiating a much more significant injury to Ellerin's breast, but did not follow through for whatever reasons.

Two of Ellerin's fatal injuries were to her anterior chest wall. The location of these two wounds is similar in location to the stabbing injury Murphy suffered to her sternum. According to the Medical Examiners' reports, the wounds in the three homicides were not just "in and out". The offender twisted the knife back and forth with both downward and upward movement as well as movement left to right and back and forth. This multidirectional pattern of the knife was likely done to assure maximum damage.

## **MOTIVATION**

Violent crimes are dynamic events that change as the offender's interaction with the victim changes. An offender's motivation is generally defined as his reason(s) for committing the crime. Violence is complex and there are multifactorial causes for it (Niehoff, 1999). Therefore, an offender is not likely driven by a singular motive during the commission of a crime, but rather multiple motives. When

analyzing a violent crime scene, motivations are inferred from the offender's behavior at the scene as well as the absence of certain behaviors (O'Toole, 2007).

### **Lack of Evidence of Financial Gain as Motive**

*Robbery or burglary was not a motive in these cases.*

There were items of value left in the victims' homes and on their person, including jewelry and cash. There was no ransacking inside the homes to indicate the offender was searching for something in particular or randomly searching for items like drugs, bank papers, computers, phones etc. or other items of value. Pacaccio, Ellerin, and Murphy had cars parked close to their residences, which the offender could have taken, but did not. Pacaccio had her car keys with her when she was found, but her car was not disturbed.

### **Thrill Seeking & Excitement as Motivation**

*The offender engaged in significant and excessive risk taking behavior in each of these cases. Thrill seeking and excitement are likely motivators for this offender and could be sexually arousing for him.*

For some offenders increasing or maximizing their own risk level during their crimes is purposeful in order to make the crimes more exciting for them. Thrill seeking through high-risk behaviors can be part of an offender's motivation.

This offender took multiple and significant risks to commit each of these murders/attempted murder. His risk taking is excessive and beyond what was necessary to commit the crimes and could be considered another "Signature" behavior. He likely engaged in risk taking behavior to make the crimes even more exciting for him both psychologically as well as sexually.

This offender's need for thrill and excitement can be seen in the following high-risk behaviors and support this writer's opinion that thrill seeking and excitement were part of his motivation and he specifically designed and incorporated high-risk elements into the crimes.

- *Attacking specific victims in their homes.*
- *Following and watching victims in their neighborhoods and around their homes while others are present.*
- *Obtaining "real-time" information about the victims immediately before the attacks.*
- *Committing the crimes when others are around.*
- *Initiating attacks during small windows of opportunity.*
- *Accessing the victims and their homes in high-risk ways.*
- *Spending excessive time in victims' homes engaging in murder and postmortem mutilation.*
- *Similarly Posing Ellerin's and Bruno's bodies.*

### **Paraphilic Behaviors**

***This offender engaged in sexually gratifying behaviors during these crimes, some of which are likely paraphilic behaviors for him.***

An offender who is sexually motivated to commit a crime or series of crimes can engage in both sexually deviant as well as non-sexual behaviors because it is sexually arousing for him. These sexually arousing behaviors can be either his "preferential sexual interest" or denote an "intense sexual interest" for him (DSM, 2013). "A paraphilia denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners" (DSM, 2013). In some instances, including crime scenes, "intense and persistent" is difficult to assess, and in those cases a paraphilia may be defined as "any sexual interest greater than or equal to normophilic sexual interests" (DSM, 2013).

Sex crimes, including serial sexual homicide, frequently involve paraphilic behaviors. In addition to obvious sexual behaviors, paraphilic behaviors include behaviors that are non-sexual in nature but are still sexually gratifying for the offender. Paraphilic behavior patterns can involve sexual objects, situations, non-consenting partners, children, or the suffering and/or humiliation of one's self and/or others (Hickey 2006).

Bronswick (2001) identified sexual and possibly paraphilic behaviors commonly found in serial murder cases. Included in his list of behaviors were mutilation of victims and picquerism, which is defined as sexual arousal resulting from repeatedly stabbing a victim (Geberth, 2006). Other paraphilic behaviors noted in sex crimes included voyeurism, predatory behavior, and post-mortem mutilation (Bronswick 2001). Paraphilic behaviors found in a sexually motivated homicide would be considered part of the offender's "Signature". In this series of crimes there are unique behaviors the offender engaged in which were likely sexually arousing for him, and they are discussed below.

## **Sexual Motivation**

***These murders/attempted murder were sexually motivated.***

There was no evidence that this offender sexually assaulted or attempted to sexually assault any of these victims, vaginally, anally, or orally. Seminal fluid was recovered from victims Maria Bruno and Ashley Ellerin. The biological contributors of this DNA were subsequently identified as the male partners of these women who had consensual sexual relations with them shortly before their homicides.

However, other offender behaviors exhibited in these scenes do suggest that sex was an underlying motivation and while some of the behaviors indicative of sexual motivation are non-sexual in nature, they could still have been sexually arousing and exciting for the offender. The victimology in these cases, along with other unique offender behaviors, supports this writer's opinion that these crimes are most likely sexually motivated.

All of the victims were females, and described as attractive women. They were each alone at the time they were attacked. Bruno and Murphy were nude when attacked. Ellerin and Murphy had just gotten out of the shower. Ellerin and Bruno had engaged in sexual intercourse with male partners shortly

before their murders and this offender was likely aware of this because he was watching or listening to it. The offender attacked these victims by physically overpowering them. His body would have been on top of Bruno and Murphy as he was attacking them. He would have been wrapped around Ellerin and Pacaccio as he was overpowering them. When he was thrusting his knife into the victims, he would have been able to feel their bodies and hear and feel their terror and their responses to the pain from being stabbed. Three of the victims had stab wounds to their breasts, and Bruno had her breasts and nipples removed. Ellerin and Bruno were posed after death in provocative and demeaning poses that were sexual in nature. All of this behavior is indicative that these crimes were sexually motivated.

### **Watching Behavior/Voyeurism as a Sexual Motivation**

*The offender watched and/or listened to the victims immediately prior to his attacks.*

This offender very likely watched and/or listened to each of these victims before he attacked them. His success at selecting the right window of opportunity to initiate each attack indicates he was watching them over time as well as immediately before the attacks.

Two of the victims had just engaged in sexual relations with their partners prior to their homicides. Since this offender would most likely have been right outside their windows when this was happening, he either heard or saw what they were doing. In addition to providing him with "real time" information about the victims, if this "watching" behavior was sexually arousing for the offender, it could meet the definition of being voyeuristic. Voyeurism is defined as being sexually aroused by watching an unwitting person or persons involved in undressing, or engaging in sexual activity or other type of intimate behavior (Hickey, 2006).

### **Blitz – Ambush Style of Attack as Sexual Motivation**

*The offender attacked the victims in a "behaviorally explosive" manner because it likely was sexually arousing for him.*

The style of attack used by this offender was effective because it allowed him to quickly and forcefully control all of his victims. (He ultimately lost control of Michelle Murphy.) Quickly controlling his victims and maintaining that control was critical in order for him to be able to inflict the damage he intended and to ultimately cause their death.

However, this style of attack was not necessary to the completion of these crimes. Although effective, it was excessive. There are multiple methods an offender can use to access and control a victim, including using one's verbal skills. In this case the offender could have controlled the victims with the knife he brought with him. Using this blitz-ambush style attack, this offender was able to do much more than control the victims. He was able to startle them, frighten them, even terrorize them, and overwhelm them in a very aggressive manner while being physically very close to them. His dominance over these victims not only was very likely thrilling and exciting for him, but it could have been sexually arousing for him as well. He was physically on top of both Bruno and Murphy who were

both nude, and he was wrapped around Pacaccio and Ellerin. He would have been close enough to feel their bodies' reactions to the attack, hear their responses to their fears and seen the terrified looks on their faces which could have made the attack not just an efficient way to control them, but sexually arousing and exciting for him as well.

### **Startling/ Frightening/Terrorizing the Victims as Sexual Motivation**

*Each of these victims would have been overpowered and frightened by the offender's blitz-ambush attack.*

If the offender utilized the blitz ambush style approach in order to elicit a fear response from the victims because he found their reactions to be sexually arousing for him, his behavior could meet the definition of sexual sadism. Sexual sadism is the sexual arousal to the victim's response to the infliction of physical and/or emotional pain (Hickey, 2006).

### **Stabbing/Picquerism as Sexual Motivation**

*Each of these victims was stabbed multiple times. The stabbing was excessive and over and beyond what was necessary to commit the crimes.*

The amount of stabbing to the victims was gratuitous, and beyond what was necessary to control them or even kill them. Therefore, this offender engaged in this behavior for either or both psychological and sexual reasons. Picquerism is defined as the sexual arousal to stabbing another person. If this offender was sexually aroused by the act of stabbing his victim's, the behavior could meet the definition of picquerism and could be a paraphilic behavior (Geberth 2006).

### **Murder as Sexual Motivation**

*This offender intended to murder his victims and the act of murder itself could have been sexually arousing for him.*

This offender's intention was to kill each of these victims. He did not intend to merely frighten them, disable them or control them for sexual purposes. He intended to kill them and the severity of the injuries he inflicted along with the absence of any behavior to indicate an escalation of violence between offender and victim supports this opinion. Had Michelle Murphy not woken up and fought off her offender, he would have killed her as well. Murder was a significant motivation for this offender. However, if the process or act of murder itself was sexually arousing for this offender, and he was sexually aroused as he was killing them, the act of murder could be a paraphilic behavior for him. If the victims' reactions to what the offender was doing to them, including the looks on their faces, their expressions of fear, their verbal responses, etc. were sexually arousing, the offender's behavior could meet the definition of sexual sadism.

### **Posing Victims' Bodies as Sexual Motivation**

*The bodies of both Ashley Ellerin and Maria Bruno were posed by the offender, in similar ways, after he murdered them.*

Maria Bruno, "an adult female, was lying on the north side of the bed with her head pointing east. She was in a pseudo supine position atop a white comforter resting on her shoulder but turned at the waist so that her hips were stacked and resting on the right side. Both of her legs were bent at a ninety-degree angle at the hips and knees. The decedent's left arm was bent at the elbow so that the left hand rested next to her navel. Her right arm was perpendicular to her torso and bent at a right angle at the elbow so that her right hand rested in her head hair. The victim's throat had been deeply cut. Both of the decedent's breasts had been removed and augmentation implants were visible. One nipple and surrounding tissue was above her right shoulder, the other nipple and surrounding tissue was by the left side of her face" (El Monte, CA. Crime Scene Report 12/1/2005).

The offender posed Maria Bruno's body. The way she is found lying in bed would not have been a natural postmortem position for her body. She had to be specifically posed in that manner. The post mortem mutilation of Bruno's breasts is prominently displayed in the way he posed her. The offender placed the dismembered parts around her head and shoulders but originally placed one of Bruno's areolas on her mouth with the nipple pointing up. Bruno's husband subsequently brushed it off her mouth when he found her. Her eyes and mouth are both opened and there is blood around her mouth area, which is likely blood transfer by the offender manipulating her mouth. Her head is tilted to the side clearly exposing the severe cut to her neck. In fact, tilting the victim's neck in this fashion actually showcases this very severe wound. There appears to be blood smearing between her legs, which was likely done by the offender manipulating her thighs. She is positioned in a ghoulish pose designed to denigrate and shock whoever finds her.

Ashley Ellerin's body was also posed. She is laying on her back with her head turned to the side. Her eyes and mouth are also open and there is also blood around her mouth. Her robe appears purposefully but neatly and symmetrically draped across her body exposing the dark shorts she was wearing. There appears to be blood smearing between her legs, indicative of the offender positioning her legs. Her left hand with the index finger is pointed toward her inner thigh area and vaginal area. The blood pattern on the back of the left hand indicates it had been moved from the source of the blood where it had been laying. Her right hand is draped across her robe. Her legs are spread apart with her left leg bent at the knee and her right leg straight. Her body would not have naturally collapsed in this position. Her body is lying next to a pool of blood but she is not lying in the blood. The pool of blood is likely the source of the blood patterns on her robe and her hand. But because her body is adjacent to this pool of blood, rather than lying in the blood, is indicative of her having been moved. The manner in which Ellerin's neck was positioned, purposefully shows off the severe cut to her neck. There also appears to be blood smearing on the top and between the fingers of Ellerin's right hand indicating her fingers had likely been moved and positioned in that fashioned. Two of her fingers on her right hand are clearly visible and appear to be posed in that manner.

Posing behavior is unique behavior in a homicide scene and is indicative of the offender's underlying motivation(s). The offender posed Ashley Ellerin and Maria Bruno in a manner in which he wanted them to be seen, found, remembered, and in a manner that was significant to him. Posing them in what appeared to be provocative, sexual, albeit ghoulish, poses after inflicting such severe injuries on them is extremely demeaning to these victims and very callous on the part of the offender. These victims were objects to him. For the offender, seeing these women displayed in this manner - destroyed and ruined - was likely very "satisfying" for him, even enjoyable, fun, and sexually arousing. He most likely wanted to remember them and how they looked, and it is therefore likely he would have photographed them.

In the Pacaccio case it is not possible to determine if her body was posed. Her body had been moved by her father when he initially found her, and then shortly thereafter by the first responding medical personnel. This behavior is not applicable in the Murphy case.

### **Postmortem Mutilation as Sexual Motivation**

#### *The postmortem mutilation of Maria Bruno was sexually motivated.*

The post mortem mutilation of Maria Bruno was directed at her breasts, which are considered a sexual part of the female body, which is indicative that this behavior was most likely sexually motivated. The mutilation involved the removal of her left breast, areola, nipple and adjacent skin as well as the underlying breast implant. It also included the removal of her right breast and right nipple and adjacent skin along with the breast implant. This is gratuitous behavior and beyond what is necessary to commit a murder. To place the dismembered parts around her head and shoulders is particularly macabre and disrespectful toward the victim. Originally the offender placed one of Bruno's areolas on her mouth with the nipple pointing up. The offender was "playing" with Bruno's body in a ghoulish manner like she was an object and not a human being, something to be made fun of. This behavior could be considered a "Signature" behavior and was likely both psychologically as well as sexually arousing for this offender because it involved a sexual part of this victim's body.

### **SUMMARY**

It is the opinion of this author that the murders of Tricia Pacaccio, Ashley Ellerin, Maria Bruno, and the attempted murder of Michelle Murphy were committed by the same offender based on thirty-seven points of similarity in the offender's crime scene behaviors. It is also the opinion of this author that:

- *The offender intended to kill these victims because he hated what they represented to him.*
- *These crimes have a sexual component to them.*
- *There is an absence of vaginal, anal or oral sexual assault.*
- *The offender engaged in predatory behavior and the violence was cold-blooded, purposeful, and goal directed.*

- *The style of approach to the victims was "behaviorally explosive."*
- *The offender depersonalized these victims and treated them like objects and not human beings.*
- *Each victim was stabbed multiple times.*
- *Injuries were severe and lethal to three victims with multidirectional, deep penetrating injuries.*
- *The offender wanted Ellerin and Bruno to be found in a manner that was degrading to them and shocking to the family and friends who found them.*
- *The offender's behaviors, which appear to be sexually motivated and possibly paraphilic in nature include picquerism, sexual sadism, voyeurism, post mortem mutilation, predatory behavior, body posing and the act of murder.*
- *The victims may not have known this offender; or, if they knew him, did not realize his potential for extreme violence and lethality.*

End of section

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*End of section*

For additional information regarding this assessment and the opinions contained herein, Dr. O'Toole can be contacted through Assistant District Attorneys Dan Akemon (213) 974-3992, or Garrett Dameron (213) 974-3943, Los Angeles County District Attorney's Office.

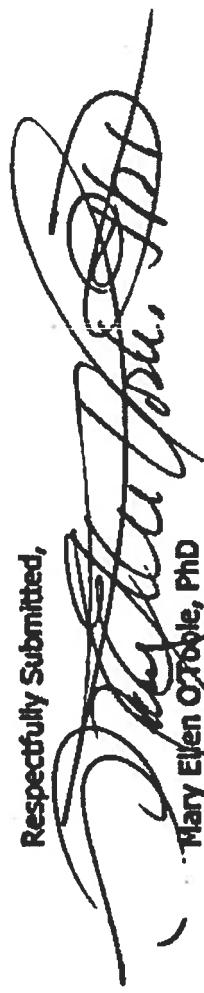
Respectfully Submitted,

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